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JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

VOLUME XIV

CONTAINING

OCTOBER 1906 TO JULY 1907

Bind title pages to each part as well as general title page

MONTREAL:
THE GAZETTE PRINTING COMPANY
1907

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INDEX TO VOLUME XIV

PAGE.

Are Express Companies Bankers ?.......... 340
As Others See Us.......... 381

Bank Officer As Student, The. A. Gordon Tait.......... 42
Bank Act, Lectures On The. A. Rives Hall..........58, 123 232
Bank of Japan, The.......... 368
Banks vs. Express Companies.......... 338

Canadian Currency, Banking and Exchange, The History of. Adam Shortt, M.A.......... 7
Cash Reserves and Financial Supremacy. H. M. P. Eckardt.......... 176
Currency Question in The United States, The. As It Appears to a Canadian. John T. P. Knight.......... 185
Commercial Crises. A. W. Flux..........214, 302
Canadian Banking System, The. A. H. M. Hay.......... 257
Canadian Law of Banks and Banking, The. S. C. Norsworthy.......... 374
Clearings, Table of.......... 99
Circulation Records.......... 6

Editorial Notes..........1, 89, 193, 291
Exchanges, Functions of. A. W. Flux.......... 100
Expansion, Too Much.......... 376

First Principles of Contract. R. E. Macnaghten..........275, 321
Financial Conditions, Mr. Vanderlip's Analysis of. A. R. Doble.......... 334

Liquidation of Failed National Banks. H. M. P. Eckardt.......... 343

Magic of The Mine, The. A. R. Doble.......... 204

Power of Attorney, The Modern Development of. R. E. Macnaghten.......... 28

Reserves in United States, Canada, and England. F. S. Mead.......... 355

Socialism. "What Is It." John S. Lewis, Jr.......... 37
Social Readjustments. John S. Lewis, Jr.......... 269
Statistics in Relation to Prosperity, Manufacturing. J. E. Boswell.......... 350

Wheat Plant Louse, The. Douglas Weir, B.S.A.......... 382

QUESTIONS ON POINTS OF PRACTICAL INTEREST.

Bill for collection—Dates of acceptance—Held After due dates 289
Cheque payable to order—Right of Drawee—Bank to demand endorsement.......... 85
Cheque endorsed—Deposited to the credit of.......... 288

INDEX—*Continued.*

Deposits in name of party "In Trust"—Right to Garnish...... 85
Deposits in name of person, Account distinguished by Initials of a Company..Can Power of Attorney be given?..... 86
Note with two Endorsers—not protested on due date—Are Endorsers discharged?.............................. 86
Notice to stop payment of cheque by one executor after an order from Court had authorized the payment............... 87
Garnishee of an account. Can a bank charge up a current note? 287
Savings Bank cheques. Should they be returned?.......... 287
Shareholders Deceased—Power of Attorney to transfer Stock.. 288

JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

Vol. XIV] OCTOBER, 1906 [Number 1

CONTENTS

PAGE
EDITORIAL 1
CIRCULATION RECORDS 6
HISTORY OF CANADIAN CURRENCY, BANKING AND EXCHANGE 7
THE MODERN DEVELOPMENT OF POWERS OF ATTORNEY 28
"SOCIALISM;" WHAT IS IT? 37
THE BANK OFFICER AS STUDENT 42
LECTURES ON THE BANK ACT 58
QUESTIONS ON POINTS OF PRACTICAL INTEREST.... 85

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1906

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VOL. XIV.] [Number 1

JOURNAL
OF THE
CANADIAN BANKERS' ASSOCIATION

OCTOBER, 1906

EDITORIAL NOTES

Prosperity and the Banks.

Several of the general managers of Canadian banks who have recently been visiting our wonderful western country, have not hesitated to direct attention to the evil of land speculation. The banks have this matter largely in their own hands, and it is to be hoped that all of them will unite in discouraging such speculation and in promoting the solid interests of the country by loaning money only for commercial and industrial uses. The efforts of the banks should be directed toward the development of legitimate industry, and they must, if only from selfish motives, see to it that the deposits of the thrifty and prudent are not used in creating another dangerous land boom, with its attendant troubles.

The words of warning uttered by leading Canadian bankers should be heeded. They come none too soon.

The successful harvesting of another large crop seems to promise another year of prosperity. It will be regrettable if the continuance of good times sweeps away all feelings of conservatism among those who are at present blessed by Providence.

Some Circulation Figures.

Once again the currency system of the United States is being severely criticized at home and abroad. It is said to be inelastic and ill-adapted to the great changes from season to season in the demand for money.

Mr. Vanderlip, in his address before the New York Bankers' Association, in July last, stated that during the autumn months the increase in the circulation amounts to about $200,000,000. The money is mostly in demand in connection with the work of harvesting and marketing the crops. The increase in the circulation of Canadian Chartered banks during the same season, it will be observed from the table published in this issue, is about $20,000,000. It is surprising that such an intensely practical people as our neighbours should find it difficult to effect a reform so much needed as that in their currency system.

However, a new system has been drafted for consideration by the bankers of the different States at their coming conference at St. Louis, and doubtless the necessity for change will result in action rather than in further fruitless discussion of the subject.

More Silver Wanted.

The Secretary of the United States Treasury is reported to have been buying silver bullion, on account of the growing demand for subsidiary coins. The amount of the increase in the circulation of silver since 1897 is said to be fifty-one millions, the figures published in 1897 being $59,616,000, and the latest $111,000,000. The demand for bills of small denominations is, of course, in keeping with that for subsidiary coins.

The industrial prosperity of the United States, the increase in the number of workmen and the corresponding growth in their total earnings account for the present marked demand for small bills and silver. High wages and regular work tend to keep the breadwinners well supplied with change.

Canada is also enjoying a long period of industrial prosperity, and the increase in population has, of course, led to a marked growth in the country's need for pocket money. Not only is the total amount of the bills of small denominations issued by the Government constantly increasing, but the circulation of the chartered banks also tell a story of steadily increasing demand for the medium of trade and barter-money.

In the past five years the total amount of notes in circulation by chartered banks show a very large increase.

"Financial Fiction."

Some of the United States papers express regret that the Secretary of the Treasury should buy silver bullion when a great hoard of silver dollars is in the vaults of the Treasury. The *Bulletin* in discussing the matter, says:—"By a sort of financial fiction, these silver dollars are supposed to be in circulation potentially in the form of silver certificates, but this is only a fiction. The silver certificates do not derive their value or their usefulness as currency from the existence of the silver dollars at Washington. The silver certificate is accepted by the people as equivalent to a gold dollar merely because of their confidence in the ability of the government to keep it at par with gold. Legally a silver certificate is convertible into a silver dollar, but nobody would ever think of asking such conversion, for it is practically convertible into gold itself."

The Word "Bank."

In the search for new banking laws the people of the United States are evidently very much in earnest, and in one particular, at least, good is likely to result from the efforts to place private banks under some sort of supervision. Our neighbours cannot do better than to borrow the very excellent clause of the Canadian Bank Act by which the use of the word "bank" is denied any but incorporated institutions.

This Journal has upon several occasions called attention to the wisdom of denying foreigners the right to use their equivalent for the word "bank." To immigrants "bank" means a safe place in which to deposit their savings, and if the use of the word in English is forbidden by the law of the land, poor and illiterate foreigners should not be exposed to the risks inseparable from dealing with men who, by means of circulars printed in foreign tongues, invite their unwary countrymen to deal with them.

The laxness of the laws in the United States in relation to banking invites the bold and unscrupulous adventurer to fleece the foreigner. In some States any man can open a bank without a licence, and he is subject to no inspection of his methods of doing business. But if he elected to drive a cab for a living, a license fee and conformity with the regulations governing public vehicles would be necessary.

Some Currency Comments.

Although the bankers and political economists seem to be unable to grapple successfully with the United States currency question, the comments made thereon by financial writers betray accurate knowledge of the cause and effect of the trouble. The money required for the removal of the crops is mostly supplied by banks in the financial centres, and its withdrawal from thence causes considerable contraction in loans and deposits.

Of the condition of things created by the demand for currency for the western harvest fields, the *Bulletin* says:—

"It is to be hoped that our markets will weather the crop-moving period of this year without serious trouble. Despite the great size of the crops New York bankers are in a confident mood, believing they are well prepared to meet any probable drain upon their resources. Some authorities even claim that the demand for currency will not be as large as usual, on the ground that the banks of the west now hold so much money that they will not be obliged to call on New York for very much help. We are inclined to regard this view of the situation as erroneous. It is quite true that the west has been greatly increased in wealth and that the country banks are in a very prosperous condition. The returns from those banks, however, do not show that they have much idle money on hand. Their cash holdings are larger than they were last year, but so are their loans and deposits, so that their proportion of reserve is about the same. It would seem, therefore, that they are no better prepared than they were a year ago to send currency into the harvest fields. It is known that many country banks in the west have been buyers of eastern paper during recent months, and it may well be expected that much of this paper will be returned to the east during September and October, thus providing the country banks with the means of withdrawing currency from this city." As the situation is well understood by the best informed bankers of New York City, there is no great reason to fear that the New York money market will be subject to dangerous pressure.

Complimentary to Canadian Banking.

The many Canadian friends of Mr. James B. Forgan, President of the First National Bank of Chicago, will derive pleasure from reading the announcement of his intention to open a bank in Chicago modelled on the Canadian plan. Mr. Forgan is in himself a splendid exponent of the principles of sound banking, and "American tradition and practice" will not be permitted to interfere with his plan of creating "a model bank."

The United States absorbed a man of strong character and remarkable energy when Mr. James B. Forgan became an American citizen. However, Scotland and Canada have good reason to feel proud of their sons, no matter under what flag they may by force of circumstances elect to live.

Mr. Forgan's adoption of the Canadian bank plan is a compliment to the Dominion. *The Financier,* New York, says:—

"From the ruins of the Milwaukee Avenue State Bank will arise in the near future a new financial institution, which James B. Forgan, who is to be chairman of the board of directors, declared would be unique in this country. It will be modelled on the Canadian or so-called Scotch-English plan, which eliminates the president of the bank from the role of the "all powerful one," which American tradition and practice make him.

In other words, the president of the new bank, will be subject at all times to the authority of the directorate's chairman. He will work under a system which will ensure conformity to the principles of sound banking, and his methods of doing business will be scrutinized daily by Chairman Forgan.

J. T. P. K.

CIRCULATION RECORDS.

(Compiled from the Monthly Returns of Chartered Banks)

CIRCULATION.

	1902	1903	1904	1905	1906
	$	$	$	$	$
January......	48,586,531	55,040,987	56,973,274	57,759,897	60,984,874
February.....	49,450,996	55,746,498	57,736,245	58,775,904	62,433,150
March........	52,442,984	58,283,484	59,760,121	58,693,519	65,989,834
April.........	50,691,588	55,877,648	58,649,872	59,920,229	66,519,536
May..........	50,754,716	56,949,120	57,857,177	58,116,272	64,215,192
June.........	53,953,043	58,865,846	60,098,482	61,585,833	69,364,324
July..........	52,070,065	57,563,666	59,979,833	61,275,448	68,180,620
August.......	55,035,701	60,414,740	60,227,074	62,495,545	70,106,393
September....	60,965,802	63,741,271	63,795,962	69,829,147	....
October.......	65,928,974	70,480,613	72,226,306	76,880,440	....
November....	64,497,641	67,425,588	69,427,032	72,543,685	....
December.....	60,574,144	62,539,408	64,507,394	69,979,979	....

CAPITAL PAID-UP.

	1902	1903	1904	1905	1906
	$	$	$	$	$
January......	67,621,011	72,855,485	78,625,589	79,931,057	85,802,587
February.....	68,041,136	72,931,549	78,701,542	81,131,491	85,958,202
March........	68,406,624	74,776,500	78,723,552	81,254,095	86,954,048
April.........	68,474,523	75,443,635	78,737,844	81,313,513	88,867,936
May..........	69,358,448	75,979,338	78,801,319	81,464,981	89,817,964
June.........	69,584,308	75,905,206	79,193,028	82,600,400	91,018,334
July..........	69,733,761	76,971,021	79,267,773	82,428,020	91,720,584
August.......	70,196,245	77,481,095	79,458,425	82,671,754	92,976,224
September....	70,989,408	77,997,874	79,642,783	83,063,509	....
October.......	71,281,535	78,255,462	79,747,011	83,503,248	....
November....	71,928,508	78,396,132	79,851,310	83,690,417	....
December.....	72,015,664	78,555,368	79,966,796	84,797,295	....

THE HISTORY OF CANADIAN CURRENCY, BANKING, AND EXCHANGE.

The Revision of 1880.*

THE severe commercial and financial depression of the later seventies, and the revelation of financial weakness, bad management, and even dishonesty and corruption in the operations of a number of the chartered banks, naturally affected the attitude of the public towards the banking system. This, in turn, influenced the policy of the Government when it came to revise the Bank Act, in 1880, and consider the renewal of the charters of the existing banks, which expired in 1881. In consequence of the prolonged depression the general public were in a favourable mood to grasp at any innovations which promised, in a plausible form, a simple and sweeping remedy for all their economic evils The public at large have little sympathy with an accurate and painstaking analysis of economic or social situations, and still less with any complex or detailed remedies involving careful and discriminating treatment. Obvious and widespread distress, though the product of many and sometimes remote or complex causes, must be attributed to one universal and obvious cause, and one correspondingly simple and universal remedy must be offered. If only the explanation and the remedy involve a very obvious truth, little question is raised as to the rest of the scheme. Every reservation or qualification of a popular policy weakens it in the eyes of the multitude, who find mental peace and moral comfort in bold and clear-cut propositions supported by dogmatic and uncompromising assertion.

Two closely related policies of this description came to the front when the depression was at its maximum. Both came from the United States, where they had done excellent service for their political exploiters. The first, which in theory was simplicity itself, and in practice appealed directly to primitive individual selfishness, was the National Policy as to the tariff, and the second, which grew out of it by natural logic, but was later in the field and necessarily involved more technical terms and ideas, was the National Currency policy. The former insured national prosperity by mere act of parliament; the latter required in addition a printing press and more or less organization to get the fertilizing stream of paper money into circulation. We are specially concerned with the currency policy, though it was regarded by its advocates as supplementary to the tariff policy. Both policies depended upon the Government as a kind of special providence which could put them in motion and superintend the working out of their benevolent purposes.

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* Chief sources:—

Journals of the House of Commons of the Dominion of Canada, 1879-80.

Statutes of Canada, 1872-1880.

Debates of the House of Commons of the Dominion of Canada, 1880.

The Globe, Toronto, 1879-80.

The Canada Gazette, 1875-81.

As regards the currency, a widespread feeling took root in the United States and spread to Canada that the government could restore prosperity to the continent by making money more plentiful, and especially more available as capital for the support of industry. In Canada the principle first came before Parliament in concrete shape in 1878, in the form of the Agricultural Banking System. The bill embodying this scheme was introduced by Mr. Thompson of Welland, seconded by Mr. McKay of Cape Breton. The object of the measure, as set forth in the resolutions presented, was in substance as follows: Its general purpose was to put an end to the periodic crises, which were in the habit of paralyzing Canada and the United States, and which, instead of being due, as was commonly supposed, to over-production or over-trading, were the natural consequences of an inadequate monetary system. The existing systems might possibly answer for commercial pursuits, but it afforded no adequate aid for agricultural development, which required money at low rates of interest and for considerable lengths of time. But with the development of agriculture, upon which all the other industries and interests of the country depended, the prosperity of the people at large would naturally be insured. The plan was to establish an agricultural bank in every county throughout Canada, each with a capital stock of at least $500,000, in shares of $25 each; the whole of the capital to be paid in before the bank began business. This capital was then to be handed over to the Dominion Government in return for an equivalent amount in Dominion notes, the Government to pay three per cent. on the capital deposited. Moreover, all deposits made with the banks were also to be transferred to the Government in return for Dominion notes and to bear a like interest of three per cent. The banks were not to issue notes of their own. These agricultural banks would lend to farmers only, for terms not exceeding one year. The loans were not to be secured by either real estate or ordinary commercial paper, but the banks were simply to lend on open account with the security of two bondsmen and at a rate not exceeding five per cent. per annum. Borrowers and depositors were to receive interest at three per cent. on their balances, but a commission of one per cent., on the average business of the year, was to be charged both borrowers and depositors towards defraying the cost of management. No dividends were to exceed five per cent., the surplus to be devoted, first, to the accumulation of a reserve fund of ten per cent. to equalize future dividends, and the remainder to be applied to the reduction of the rate of interest on loans as much below five per cent. as possible.

The patriotic and beneficient intentions of this measure, and the natural consequences to be expected from an attempt to realize them in practice, will be appreciated by all who understand the fundamental principles of banking. From the point of view of the promoters, however, the following results were to be expected. An almost unlimited opportunity was afforded for those having surplus capital to find a permanent investment for it, at five per cent. The large fund gathered by the banks from capital and deposits, when handed over to the Government would furnish it with large loans at three per cent., to be applied to desirable public works,— a great source of wealth when brought into operation. But the banks, though handing over their acquired capital to the Government, would receive in return the equivalent in Government notes, which, for all purposes of domestic capital and exchange, would be equally good, and would supply the farmers with a very extensive fund to be applied in raising large annual crops. These, it seemed obvious, after returning the capital of the banks with five per cent. interest, would leave a large surplus for the farmers, which being confined by the National Policy within the country would inevitably insure general prosperity to all interests. Possibly some skeptics, bred in the old atmosphere of crises, stagnation, free trade, and corruption, might raise such questions as, Where would a fund be found for the redemption of the notes when necessary? A sufficient reply, however, might be furnished by drawing attention to the fact that, an absolutely certain foundation for continued prosperity having been laid, there could be no reasonable occasion for withdrawing money from circulation except in very small quantities which would not affect the general currency. Moreover, there would be practically no call for specie in international exchange, for, under the new National Policy, while we should largely increase our exports we should receive very few imports and those chiefly in the form of raw materials. As to manufactured goods, the patriotic would not import them and the unpatriotic would be restrained by the tariff. Having to provide therefore only for domestic exchange, government paper would perfectly answer all purposes and specie would cease to be an essential factor in Canadian exchange. Many "thinking people" saw the Agricultural Banking System in this light and heartily supported it. Nevertheless, it requires time to propagate thought, even when leading to such desirable results, and the bill failed to pass.

Though the Agricultural Banking scheme failed of its object, yet the fundamental idea underlying it, that the Government ought to supply all the money required for exchange and for carrying on the industries of the country, still survived and continued to expand as a necessary development of the National Policy. Hence, when, in the first session of the new parliament, in 1879, the national tariff policy was introduced, there appeared also, from the same side of the House, the national currency policy. The resolutions embodying the National Currency system were introduced by Mr. Wm. Wallace, seconded by Mr. McCallum, and were in substance as follows: 1) As money is the creation of governments, no private company should be permitted to make or circulate it. The Government should resume this function, which has been largely delegated to the banks. The Government should furnish the necessary supply of money for the requirements of trade and commerce, and for constructing public works, such as the Canadian Pacific Railway. This money should consist of silver and copper coins, as at present, and paper money in denominations of one, two, five and ten dollar notes. Contracts already made payable in gold, or Dominion notes based on gold, to hold good, but no contracts payable in gold to be made hereafter. The government paper money to be convertible at the option of the holder into scrip payable in land, and meantime bearing interest at six per cent., or into Dominion securities of five or twenty years, and bearing interest at five per cent. The Government to loan to the banks one-half their capital in Dominion notes, to compensate them for the loss of their paper issues; the Government to take ample security for these advances and the banks to pay for the accommodation two per cent. the first year and four per cent. for the second year, after which the loan to be repaid.

The usual arguments, in their American form, were imported for use in the agitation throughout the country and in the debate in the House. Money, it was maintained, is merely the expression of a government fiat, and may therefore be issued in paper quite as effectively as in gold or silver. Moreover, a national currency based upon the labour and public works of the country, has better support than the promises to pay issued by the banks and backed by a very small redemption fund. Again, if the public works and credit of the country are sufficiently good to be accepted as the basis for money borrowed abroad, surely they are good enough to serve as the basis of money issued at home. By the latter policy not only is the large annual drain for interest saved, but the ultimate repayment of the borrowed capital is avoided. The prosperity of the United States, they maintained, was due to the issue of government paper money quite as much as to their protective policy, both eminently wise and resting upon the same national grounds. But if these measures had brought prosperity to the United States, how much more prosperous would they render so superior a country as Canada. It was entirely misleading to speak of a paper currency as irredeemable simply because it was not backed by specie, since it was much more to the purpose to have one's money redeemable in goods than in specie, especially when, as under the existing system, there was never sufficient specie held to redeem the notes.

When it is remembered that at this time there was great uncertainty as to the soundness of the banking system, there being indeed many quite indefensible practices brought to light as the result of the general weakening of the banks due to the unusual depression, it will be understood why such arguments as the above found a ready reception among people eager to grasp at any simple and sweeping remedies for all their economic ills. A "National Currency League" had been formed to promote the cause of currency reform, and on January 28th, 1879, a meeting of the league was held at St. Catharines, where the Agricultural Banking System had found its chief encouragement. This meeting gave quite an impetus to the movement and prepared the way for Mr. Wallace's motion in Parliament. The National Policy, however, having amply demonstrated its power in the country, had first claim upon the Government, hence, though the National Currency received no discouragement from the Ministry, it was nevertheless given a lower seat in the political synagogue until it should have established its political influence and demonstrated its voting power. During 1879 a vigorous agitation was maintained throughout the country, apparently with very considerable success among the masses. But, although seductive in argument the scheme lacked that immediate and obvious appeal to the personal and private interest of influential elements in the community, which was the strength of the National Policy, and it antagonized the whole banking and financial world. In the autumn of 1879 a convention of the advocates of the National Currency was held in Toronto, Mr. Wallace, M.P., presiding. This was followed by several public meetings in different parts of the country which gave the movement very considerable prominence, especially in the early part of 1880. The cause was plainly acquiring votes, and as these were almost entirely on the ministerial side, owing to the association of the movement with the National Policy, the Government was inclined to treat it with increasing respect. This influence was manifest when, in April, the Government came to deal with the renewal of the Bank Act and the relation of the banks to the Dominion note issue.

The purely banking features of the proposed amendments to the Bank Act, seemed to attract very little attention either in Parliament or in the country. Public interest centred around the question as to the future policy with reference to the issue of government notes and the extent to which these were to supplant the note issue of the banks. As we have seen, there was a widespread feeling of uneasiness in the public mind as to the security of the note issue of the banks. Though ultimately practically all bank notes were redeemed at par, yet, as a matter of fact, many people had actually suffered loss in disposing of the notes of suspended banks before their ultimate fate was determined. In view, therefore, of the critical position of the note issue question, the bankers found it expedient to offer some amendment to the existing Bank Act along these lines. They proposed to the Finance Minister that the note issues of the banks should be made a first charge upon their assets. Though from a financial point of view the proposal was open to some serious objections, which were duly brought forward in Parliament by the Opposition, yet as tending to allay the actual fears of the general public, and as insuring to the bank note circulation a more uniform value as the common medium of exchange, the amendment was justified. The uniform value of bank notes was afterwards still further strengthened by the establishment of the "note issue redemption fund" which obviated any necessity for delay in the redemption of the notes of a suspended bank. While the proposed amendment undoubtedly aided in reassuring the public as to the safety of the bank notes, interest at the time still centered around the government note issue and its possible developments.

The law regulating the issue of Dominion notes had been subject to several amendments since 1871, when Sir Francis Hincks established the system upon a definite basis and related it in a practical manner to the banking system of the country. When the critics of his measure asserted that there was no adequate guarantee against the indefinite expansion of the issue of government notes, Sir Francis had declared, with much vigor, that the Finance Minister who would expand the issue of Dominion notes beyond the limits prescribed, would deserve to be impeached. Nevertheless, the very next year the Government proceeded to remove practically all limitation on the issue of these notes. By the Act of 1872 the requirement, based upon the example of the Bank of England, that for all Dominion notes issued and outstanding in excess of $9,000,000, the Receiver-General should hold specie to the full amount of the excess, was repealed and it was merely required that the amount of the specie to be held by the Receiver-General, against such excess, should not be less than thirty-five per cent. After the change of government, however, this practically unlimited expansion of the power to issue paper money was once more reduced to bounds, by the Act of 1875. The new act prescribed that whenever the amount of Dominion notes issued and outstanding should exceed $12,000,000, the Receiver-General should hold specie for the redemption of the notes to the full amount of such excess, and for the amount of note issue between $9,000,000 and $12,000,000, the Receiver-General should hold not less than fifty per cent. in specie. Under the general Act of 1871, the issue of Dominion notes up to $9,000,000 was secured by a reserve in the hands of the Receiver-General of twenty-five per cent. in specie and the remainder in securities of the Dominion Government. An act of the following year, 1876, extended the operation of the Dominion note system to the Provinces of Prince Edward Island, British Columbia, and Manitoba, and power was given to establish branches of the Receiver-General's Department in Charlottetown, Victoria, and Winnipeg, or to make arrangements with some chartered bank for the redemption of Dominion notes in any or all of those Provinces.

Such was the condition of the system when, after another change of government, Sir Samuel L. Tilley brought forward, on April 25th, 1880, the following resolution with reference to the extension of the issue of Dominion notes: "That it is expedient to provide that the amount of Dominion Notes issued and outstanding, at any one time, may be increased to $20,000,000, provided that the Finance Minister shall always hold for the redemption of such notes an amount, in gold, or in gold and Dominion securities guaranteed by the Government of the United Kingdom, equal to not less than 25 per cent. of the total amount of such notes then outstanding, and that at least 15 per cent. of the total amount of such outstanding notes shall be so held in gold; and the statements to be published by the Finance Minister, under the Eighth Section of the Act 31 Vict., chap. 46, shall show distinctly the amount so held by him in gold and guaranteed securities respectively." ,

It will be observed that this resolution while extending the issue to $20,000,000, reduced the specie reserve from twenty-five per cent. up to $9,000,000 and fifty per cent. for another $3,000,000, to fifteen per cent. for the whole twenty millions, and for another ten per cent. provided Dominion securities guaranteed by the British Government, with ordinary Dominion securities for the remaining three-fourths of the issue. The actual issue at this time was about $12,500,000, and the additional issue for the first year was to be limited to $3,500,000, or a total of $16,000,000.

The original object of the issue of the Dominion notes, as the Finance Minister pointed out, was simply that the public might share in the profit of the note issue of the country. But, as we have already seen, the real reason at each period in the development of the system, was the pressing need for funds on the part of the Government, and the great difficulty at the time of finding relief in any other direction. Although in 1880 the Government was not in special need of funds, yet the Finance Minister had no better reason to offer for extending the note issue and reducing the specie reserve ,than the old excuse of his hard pressed predecessors, that the Government had a right to share in the profits of note issue. This attitude of the Minister was notably in harmony with the claims of the National Currency advocates, whose views, even in their strongest form, Sir Leonard Tilley and the other Ministers who took part in the debate, were careful not to dispute. The Finance Minister even pointedly ignored any responsibility of the Government as the chief custodian of the specie reserves of the country in virtue of its measures to replace specie by its own notes in the case of the bank reserves. In reply to the objection that the Government might, at a critical period, find it difficult to meet a considerable demand for specie, the Minister made the remarkable statement that the Government relied upon its balances with the chartered banks to furnish it with specie when necessary. "It is scarcely to be expected," he said, "that the deposits remaining in the banks will be under $3,000,000; at any time these deposits will be available for the purpose of meeting any demand that may be made upon the Receiver-General for gold." Now the banks were not only permitted and encouraged to hold their reserves, so far as they cared to hold reserves at all, in the shape of Dominion notes, which were made legal tender for all parties except the Government itself, but they were compelled by law to hold a minimum of 33 1-3 per cent. and an average of 50 per cent. of their reserves in Dominion notes. As a matter of fact, the banks, from motives of personal convenience, tended to hold in government paper much more of their modest reserves than the law prescribed. The banks, therefore, naturally regarded the Government as the ultimate custodian of the specie reserves within the country. Yet the Minister of Finance lightly dismissed the problem which might face the Government when called upon, in an emergency, for gold to redeem its notes, with the assurance that it could always obtain the necessary supply by calling in its balances with the banks. In the first place, however, the Government would be called upon for gold only when it was in urgent demand, hence. even if the Government were able to strip the banks of their slender stocks of specie, the natural result would be to greatly aggravate the very crisis which it was seeking to relieve. But at such a time it would not be possible for the Government to get gold from the banks, so long as they had its own notes to offer it. The call of the Government upon the banks would, therefore, simply have the effect of lessening the amount of Dominion notes outstanding. But the balances which the Government held with the banks were not for the purpose of furnishing it with gold, but to meet its regular expenditure, hence they would be available for other purposes only to a very limited extent.

Undoubtedly, the attitude of the Government as expressed by its Finance Minister, in the attempt to make light of its responsibility for the redemption of its notes, was anything but reassuring; especially when Parliament was being asked for greatly increased powers of issue, coupled with considerably reduced requirements as to the specie reserve. The leading banks protested with more or less vigor against this feature of the Government's policy. The report of the Bank of Montreal at its annual meeting in June, 1880, thus referred to the matter: "The legislation authorizing an increase of

Dominion notes from $12,000,000 to $20,000,000 on a very slender coin basis is a matter of grave importance, not only to the banks, but to the country at large; and your Directors take this opportunity of recording an opinion unfavourable to government issues of notes payable on demand, as fraught with danger to the best interests of the country." A section of the Conservatives, whose opinions were voiced by Messrs. Plumb of Niagara, and MacLennan of Glengarry, were critical of the Government's policy with reference to the Dominion notes. On the other hand, the Government measure met with much favour on the part of the National Currency section of the House, whose sentiments were voiced by Mr. Wallace, the chief exponent of the cause. His only objection was that the Government measure did not go far enough. Having reduced the gold reserve so low, he thought the Government might as well have abolished it altogether, and thus put themselves upon a safe as well as scientific basis. He seemed, indeed, to agree with the other critics of the Government, that the fifteen per cent. specie reserve was altogether inadequate to maintain the currency of the country upon a gold basis in times of crisis. But he would have the Government seek refuge on the opposite shore from that recommended by the bankers and others; maintaining that it would be much safer not to hold out the impossible pretence of redeeming the currency in gold, but to frankly rely upon the general credit of the country, which was amply sufficient for all domestic trade. As to foreign trade, obviously a paper currency could not discourage exports, and if it should embarrass imports, so much the better, for was it not the object of the new National Policy to discourage imports? On the other hand, the issue of the government notes should not be limited to $20,000,000, for what is the use of discouraging imports if we do not provide adequate means for producing all the goods we require within our own country?

The Opposition, both in the House and in the press, vigorously attacked the policy of the Government. Sir Richard Cartwright suggested that the original draught of the Government's measure was even more favourable to the National Currency section of the party than the resolutions actually introduced, it having been modified in consequence of the representations of a deputation of bankers who had waited upon the

Government. He maintained that the tendency of the Government's policy was towards the assumption of the total note issue of the country, and declared that it would be impossible for the Government to regulate the expansion and contraction of the circulation as the banks could. He pointed out, with some detail, the dangerous effect of the measure in diminishing the gold reserve of the country; even then barely adequate, and referred to the tendency of the banks since the time of the first introduction of the system by Galt and its subsequent expansion by Hincks, to steadily increase the proportion of Dominion notes and correspondingly diminish the proportion of specie in their reserves. He pointed out that in a country like Britain there is not only a large amount of specie in circulation, but large stores of it are held or employed in one form or another throughout the country, and available in response to an increase in the rate of interest to meet the requirements of the Government or the banks. In Canada, however, there are no corresponding supplies of specie, either in circulation or in reserve. One set of conditions in Canada which had commonly obscured the natural effect of the issue of government paper inadequately backed by specie, was the fact that, owing to the constant borrowing of capital abroad, there is maintained a favourable balance of exchange. But when the borrowing or investing falls off considerably the balance of exchange may turn against the country. As we have already had occasion to record, Canada had actually experienced several bad half-hours under the conditions specified, and Sir Richard Cartwright referred to recent examples within his own experience as Finance Finister during the period of depression then drawing to a close. He predicted that the Government's policy would simply aggravate similar difficulties which were almost certain to recur in the future.

The debate was contined by Mr. Charlton, Mr. Mills, and others of the Opposition, and turned chiefly on the logical development of the Government policy towards the full programme of the National Currency. Sir John Macdonald attempted to turn the tables against the Opposition by pointing to the fact that they had supported the issue of Dominion notes to the extent of $12,000,000, and argued that whatever it was right to do to the extent of $12,000,000 it was right to do to the extent of $20,000,000. Upon which both the Opposition and the National Currency advocates might well have asked, Why stop at twenty millions? However, the Government having the votes easily carried the day, the resolution being adopted and embodied in the new Dominion Note Act.

The House then passed on to take up the other resolutions providing for the amendment of the Bank Act and the extension of the various bank charters for another ten years. These were introduced on April 26th and were as follows:—"Resolved,—That the charters of the several banks to which the Act respecting banks and banking (34 Vic., chap. 5) applies shall be extended to the first day of July, 1891, subject to the following provisions:—

"1. That after the first day of July, 1881 (on which day the charters, if not extended, would expire), the payment of the notes of any such bank intended for general circulation, shall be the first charge upon its assets,—and that the bank shall not, after the said day, issue or reissue any such note for a less sum than $5, or for any other sum not being a multiple of $5.

"2. That from and after the same day, any such bank, when making any payment, shall, on request of the person to whom the payment is to be made, pay the same, or such part thereof, not exceeding $50, as such person may request in Dominion Notes for $1 or for $2 each, at the option of the receiver.

"3. And that from and after passing of the Act to be passed in pursuance of these Resolutions, the proportion of the cash reserves to be held by any such bank in Dominion Notes shall never be less than 40 per cent.

"4. That the form of the Monthly Returns to Government be so amended as to show more clearly the financial position of the bank.

"5. That Sections 3, 4, 5 and 6 of the Act of the now last Session (42 Vic., chap. 45) respecting the numbering of bank shares be repealed."

It will be observed that most of the proposed changes in the Bank Act were closely related to the problem of the Dominion note issue and derived much of their special interest from the currency agitation which then prevailed. That feature of the first resolution making the notes of the banks a first charge upon their assets, we have already discussed as representing the proposal of the bankers to allay popular mistrust as to the security of the bank notes, and offset the consequent favour with which the National Currency proposition was regarded. The latter part of the resolution, restricting the banks from issuing notes for less than $5, was one of the means adopted by the Government to enlarge the field for its own notes. In practice it deprived the banks of the issue of $4 notes only, as the $1 and $2 notes had already been supplanted by the government issues.

With reference to the second resolution, the Minister of Finance explained that since the banks had been deprived of the privilege of issuing $1 and $2 notes there had been numerous complaints of the inability of the public to obtain small notes. In receiving payment of cheques though the banks might be required to pay in gold or Dominion notes, yet no specific denominations could be obtained, except by special favour. It was deemed advisable, therefore, at once for the convenience of the public and the benefit of the government note issue, to require the banks in making payments to furnish $1 and $2 notes, if requested, to the extent of $50 in any one payment.

With reference to the third resolution, the explanation given by the Finance Minister of the proposal to raise the minimum proportion of Dominion notes to be held in the reserves of the banks, involved a very naive confession as to the inadequacy of the government reserves to meet special demands. He pointed out that for a number of years past the banks had actually held more than fifty per cent. of their reserves in Dominion notes. But as the minimum required was only thirty-three and a third per cent. there was quite a margin which the Government might be called upon to redeem, and, as the new Dominion Note Act would both increase the issue and reduce the specie reserves to be held for their redemption, there was danger of the Government being embarrassed by the banks calling for a considerable quantity of gold; he therefore proposed to raise the minimum to forty per cent. Then, as he put it, "They never can hold less than 40 per cent., therefore, whatever they require to hold leaves the chance less that they will call upon the Government at any time for a larger amount of gold." Thus, the Government, while confessedly seeking to enlarge its own issues as far as possible, and while reducing the specie reserves of the banks by drawing them into its own coffers by means of a forced loan, was anxious to prevent any call being made upon itself for specie; in other words, the note issue policy of the Government was to secure the maximum of profit with the minimum of responsibility.

The fourth resolution referred to the latest expression of the gradual evolution through which the form of bank returns had passed, in the effort to make public all those features of the banking business of the country which the general interest required should be known. The amendments had been always made to meet definite defects which practical experience had revealed. The revision of 1870 was thought to have made the returns nearly perfect, but they were amended again in 1873. One of the objects in 1873 was to distinguish the Dominion Government deposits payable on demand, and also after notice, from those of the Provincial Governments; and also to distinguish the loans made to the Dominion and Provincial Governments. Again, the balances due to and from agencies or other banks not in Canada, were divided so as to distinguish those of the United Kingdom from those of other countries. The wording of the last return was altered in 1875, and under assets was added this additional return, "Aggregate amount of the direct and indirect liabilities to the bank of its directors and of the firms or partnerships in which they, or any of them, have any interest." In 1873 also, special returns were for the first time required of loans, discounts, or advances for which shares of the capital stock of any other bank were held as collateral security. Special returns were also required as to loans, discounts, or advances for which bonds or debentures of municipal, or other corporations, or Dominion Provincial, British or foreign public securities were held as collateral securities. This was changed in 1890 to the more simple heading, "Call loans on bonds and stocks." In 1880, owing chiefly to the revelations in connection with the Consolidated Bank, the following additional returns were required: On the side of liabilities, "Loans from, or deposits made by other banks in Canada, secured;" and "Loans from, or deposits made by other banks in Canada, unsecured." And on the side of assets, "Loans to, or deposits made in other banks, secured," and "Loans to, or deposits made in other banks, unsecured." A return was also required of "Deposits held as security for the execution of Dominion Government contracts and for insurance companies." The return of government debentures or stock held was divided so as to distinguish those of the Dominion Government from all others. Loans, discounts, or advances on current account to corporations was also divided so as to distinguish municipal corporations from others. The return as to real estate, other than the premises of the bank, was divided into "Real estate the property of the bank (other than bank premises)," and "Mortgages on real estate sold by the bank."

The fifth resolution simply provided for the repeal of the clauses of the act of the previous year amending the Bank Act which aimed at the regulation of speculation in bank shares by requiring the banks to number the shares of their stock, all future transfers of the stock to make reference to the numbers of the shares transferred. This, however, was found to be unworkable, and hence it was repealed.

From the nature of the resolutions and the currency agitation then in progress, the debate on the revision of the Bank Act was very largely a repetition or a continuation of that on the Dominion Note Act. Mr. Wallace, in again presenting his views, warmly congratulated the Finance Minister on courageously inaugurating a great reform, which he hoped would be developed to its logical conclusion. To promote this end, and to prevent any further extension of the note issue of the banks, he proposed the following addition to the resolutions presented: "That no bank which under the authority of any Act of this Parliament shall get a renewal of its charter, shall be empowered to put in circulation a larger amount in value of its own notes than the amount of said notes in circulation at the date of the expiry of its present charter." This was not adopted. Some new features in the course of the debate were brought out. Mr. Plumb, while very strongly opposed to the National Currency idea, felt that recent events had proved the necessity for strengthening the security of the note issues of the banks. He did not, however, regard the proposal to make the notes of the banks a first charge upon their assets, as a satisfactory method of securing this object. "I believe," he said, "that it is the bounden duty of the Government to compel the banks to make those issues secure beyond peradventure. In order to do this, it was my idea, if possible, to assimilate our system — slowly and gradually, in order to avoid disturbance, but ultimately — entirely to that of the United States, under which the banks deposit with the Government at Washington a certain amount of public securities, which are transferred to the Controller of the banks, who holds their engraved plates in custody, and prints their circulation notes as ordered; he holds the security in trust for the redemption of the circulation; he gives the banks their notes countersigned in his department, and those notes represent not more than the current value of the securities thus held, the bank issuing no more notes than they receive from the Controller."

From this it may be gathered that the ideas of Galt, Rose, King and Hincks, as to the superiority of the American method of securing the note issue were not yet extinct. Other members, while recognizing the inelastic character of the American system of bank notes, yet wished to see it partially adopted by enabling the Government in some way to become responsible for the redemption of the note issues of the banks. This suggestion was afterwards practically realized when the Canadian Government adopted the American expedient of the Bank Note Redemption Fund.

The resolutions on banking being adopted, the Government brought in a bill embodying them. On its second reading, objection was taken by some of the legal gentlemen in the House to the extent of the powers conferred on the banks in the matter of warehouse receipts and other special privileges as creditors. In reply, the Finance Minister pointed out, with special reference to the amendment to the Bank Act of 1872, that the tendency had been to afford increased facilities to the trade of the country by permitting the banks to make advances on lumber, grain, and other cereals, and to pork packing and various other industries. By being enabled to obtain advances on goods in store, in process of manufacture, or in transit, people of limited capital were enabled to carry on their business with greater freedom. This policy, as outlined by the

Minister, was generally approved of, Mr. McLennan of Glengarry, maintaining that warehouse receipts and bills of lading should be as free for transfer or lending upon as the ordinary notes of a bank. However, the wording of this portion of the bill was evidently defective, and several amendments were made which removed most of the legal objections.

It having been found that people conducting private banking establishments, without incorporation, were employing such designations as the Bank of Hamburg, the Richelieu District Bank, etc., which might naturally mislead the public, in some cases to their loss, an amendment was proposed by Mr. Geo. A. Kirkpatrick, and accepted, prohibiting, under penalty, any person, firm, or company, not authorized by the Bank Act, from assuming or using the title of Bank, or Banking Company. This was not to prohibit, however, persons from undertaking private banking, or styling themselves bankers, or private bankers.

Once the Bank Act of 1880 had become law and the charters of the banks had been renewed for another ten years, the agitation in favour of a National Currency rapidly faded away. The revival of trade throughout the world brought returning prosperity to Canada in spite of the absence of that generous supply of government paper money represented as so indispensable to the revival of trade. But the critics of the government policy with reference to the Dominion notes were scarcely more fortunate in their predictions. The steady expansion of Canadian trade was accompanied by the continued development of modern methods of exchange and investment, through other mediums than paper or metallic money. Thus, while the total amount of currency was increasing, it was steadily diminishing in proportion to the amount of business done and of the other instruments of credit and exchange. However legitimate, therefore, the fears expressed in 1870 and 1880 as to the consequences of the policy upon which the Government was embarking, there being neither a special agitation for its continuance nor any need on the part of the Government to seek forced loans of this description, the policy was not followed up. There remained therefore only the danger as to an inadequate reserve of specie, and that has been disguised in various ways. As there has been but a small increase in paper money in proportion to the great expansion of business done, the reserves held seem adequate enough, especially as there has been little occasion to make any call upon them. Yet every payment made by a cheque upon a bank is as completely based upon the standard of exchange, and liable to be called for in gold, as if it were made in bank or government notes. That the cheques are drawn against deposits makes no difference, for the deposits are not held by the banks any more than their capital. The cheques, too, are used for the same purpose as the notes of the bank, and merely take their place as much safer and more convenient. In other words, the bank reserves are held not against notes only, but against notes and deposits combined, and, as the greater part of these reserves are in the form of Dominion notes, against which, in turn, but a fractional amount of gold is held, it is evident that the position of the national reserve fund has weakened rather than strengthened since the criticisms passed in 1880.

In prosperous times and with favourable exchanges the weakness of the national gold reserve is of little immediate practical consequence; for even the bank reserves are needed only to meet daily clearing-house balances. Since the crisis of the seventies there has been a steady stream of Canadian borrowings on the part of our governments, national, provincial, or municipal; in more prosperous seasons also borrowing has been extensive on the part of transportation, manufacturing, and development corporations, not to speak of much direct investment in other lines. This stream of incoming capital, whatever ultimate shape it may take, maintains a considerable volume of exchange at the credit of Canada, and so long as it lasts there is little occasion to test the capacity of the monetary system of the country, to meet an adverse balance of exchange, or a sharp crisis extending over the continent. One consequence of the favourable balance of international exchange is shown in the large balances which certain Canadian banks find it convenient to employ in such centres as New York and Chicago, chiefly, it is claimed, upon call loans of the best description. Such investments, so long as they continue, are reassuring evidences of the capacity of the country to meet, for a time at least, adverse exchange conditions. But financial experience shows that however prolonged the period of import-ing foreign capital may be, it does not represent a permanent or stable condition. Payment must ultimately overtop borrowing, and the longer the borrowing is in the ascendency the heavier must be the ultimate payment.

Looking at the banking system of Canada from the point of view of its historic development, we recognize that it has kept in very close touch with the actual needs and conditions of the country. Derived originally from the United States, it has been very strongly influenced by American ideas and methods, but has fortunately escaped those influences of party politics and national crises, which deprived the United States of branch banking and introduced a system of paper currency which, while eminently safe as regards the note-holders, is too rigid and unadjustable in its operation to answer the varying needs of the country. Owing to the character of the experiences which gave it shape, the Canadian system has been distinguished for remarkable economy in operation, and for an unusual capacity for adjustment in the expansion and contraction of the issues of the banks, and in meeting the varying needs of the older and newer parts of the country. Here the branch bank system has been of the greatest value; because it enables the capital and security of the older parts of the country to be placed at the service of the newer regions, in the most effective and economic manner. While this has not altogether eliminated the dangers incident to over-confidence and over-speculation, during periods of unusual expansion in the newer parts of the west, still it has brought the more conservative influences of the older sections to bear upon these tendencies in a beneficial manner. Closely associated with this is the fact that the Canadian system of banking, being hitherto chiefly developed in the line of a few large corporations instead of a multitude of small ones, makes for superior quality and greater stability in management. The Canadian system has shown weakness only when, under the influence of periods of exceptional prosperity, there has been a temptation to multiply the number of banks, and to introduce, through excessive competition, methods of business which, on the one hand, entailed increased outlay, and, on the other, diminished profits and hence cut down the margin of safety and led to practices, the evil consequences of which subsequent periods of stringency inevitably revealed, to the alarm of the public and the temporary discredit of the system as a whole.

The Canadian banking system having been developed throughout in close touch with normal Canadian business, has acquired, in the details of its practice and principles, a character altogether its own, and, on the whole, admirably suited to the work which it has had to perform. But for this very reason it is not, as a system, necessarily suited to the conditions of any other country. Nor should we fall into the error of supposing that because it has been so admirably suited to our condition in the past, it may continue without further alteration to answer our requirements for the future, with highly developed financial interests, many of them of quite a speculative character, but which are as yet only in their infancy. But if the system is true to its traditions it will effectively adjust itself to the expanding and changing needs of the country, and thus approximate to the ideal condition of any such public organ, that of a vital, flexible, progressive, and yet cautious and stable national institution.

ADAM SHORTT.

THE MODERN DEVELOPMENT OF POWER OF ATTORNEY.

THERE is no instrument, subject to legal authority and interpretation, whose utility is more apparent in the everyday transactions of life than the Power-of-attorney. So soon as men began to travel, that is to say, almost with the earliest dawn of civilization, it became expedient and even necessary that an absentee should be in a position to entrust some capable and responsible person (whose responsibility and capacity would be recognized by the laws of the land) to transact in his name and stead such business as could not be delayed till his return without a serious loss to his interests and estate.

The power-of-attorney is thus one of the most necessary and obvious outcomes of civilization, and with the increase of commerce and civilization its advantages have enormously increased. Originally, of course, it was a comparatively simple instrument, and no extraordinary legal technicalities seem to have been considered necessary. Thus it does not in the earliest recorded cases seem to have been demanded that a power of attorney should be under seal. So long as A, who contemplated making a journey which would entail absence from his business for a considerable time, appointed in writing a substitute B, who in the document conferring the power was appointed to perform certain definite acts for his principal A, the authority was held to be valid. But it very soon came to be recognized as desirable that in an instrument conferring such enormous powers, as any ordinary "power-of-attorney" must necessarily give, the authority itself should be conveyed with as much form and ceremony as the law could impart, and therefore at an early period it became a principle of English law that a power-of-attorney must be under seal, a regulation with which no one at the present day can reasonably find fault.

It also gradually became the practice, even in the case of the most full and ample *general* powers, to specify particularly and with the utmost minuteness, the actual *particular* powers which it was desired to confer by any particular instrument. It is, of course, perfectly possible to conceive of an instrument which should in theory confer in a few words all the powers which the most ample and elaborate power-of-attorney could convey. Suppose A, a resident in Canada, to be contemplating a sojourn of indefinite length in England, and to desire to confer on B during his absence the largest possible powers permissible by law. In theory such a power might be extremely brief and might run as follows:

"To all to whom these presents shall come, Greeting. Whereas I, A. —— of Montreal in Canada, am about to reside for a time in England and other places outside the Dominion of Canada, I hereby appoint B. —— of Montreal, in Canada aforesaid, to be my true and lawful attorney during my absence, to act in any and every way and for any and every conceivable purpose permitted by law for me in my name and on my behalf, precisely as I could act if I were myself present. In witness, etc."

Now such a power as the above *in theory* covers every conceivable emergency, and might theoretically be regarded as in every way unimpeachable. But so far as practical efficiency is concerned it would probably be found to be valueless. The utility of a power-of-attorney lies not in its possible fulfilment of all necessary legal requirements, but in the fact that it is so worded that any business man on reading it shall feel absolutely certain that in dealing with the donee of the power he is for all legal purposes practically and actually dealing with the principal who gave the power. Above all things, he does not want a law-suit (even if at its termination he should prove to be in the right) to be even a possible consequence of his dealing with the donee of the power. Though in the instance just given the largest possible powers are theoretically conveyed to B, no particular power is specified, and it is perfectly possible that a banker, for instance, might refuse to allow B to operate on A's account under the power specified, until he had a positive written assurance from A that it was his intention that B should use the power for that particular purpose. If this were so, it is obvious that for a most important purpose, and one the necessity for which might at any moment arise, B, though possessing in theory the largest possible powers from A, would in actual fact be powerless to handle his principal's account, or to do any business for him whatsoever.

Or, take another instance. Suppose an opportunity should arise for B to make for A during his absence an excellent investment in real estate, one, in fact, the desirability of which A had repeatedly impressed upon him in private conversation. It is again perfectly conceivable that the vendors on reading the power-of-attorney given above might refuse to enter into negotiations with B (and there is surely no legal enactment which could compel them to make such a contract against their will) unless they had a definite and positive authority from A permitting B to act in this particular way. It is, of course, perfectly conceivable, and even probable, that in both the cases supposed, if the banker on the one hand, and the vendors of real estate on the other, chose to accept B as fully qualified under the power of attorney, A would not subsequently be able to repudiate the transaction. But the point to be observed is this, that in the case of a general power-of-attorney, there is no possibility of compelling third parties to accept the instrument as conveying particular powers, if they should refuse so to do.

And the consequence is, that though in theory a short but comprehensive power-of-attorney might be considered sufficient to enable the donee to transact all conceivable business on his principal's behalf, yet, as a matter of fact, it is always desirable to supplement such general authority, by definite and specific powers in relation to all such matters as may at any time require to be performed by the donee of the power; and thus it is that in all well-drawn instruments, the general powers first mentioned are supplemented and explained in detail.

Until a comparatively recent period such a careful enumeration of the particular powers to be conferred upon the donee by the giver of the power has generally been found sufficient to insure the performance of all that the principal could reasonably desire. But the extraordinary development of commerce in the last few years, and especially the introduction and utilization of the telegraph and even the telephone, have brought about a state of affairs which seem to render some further development of the power-of-attorney necessary. How it is to be effected is another matter, but that the need exists is at least clear, though there are great difficulties in the way of its satisfactory accomplishment.

To explain the present position; let me give an imaginary concrete illustration. Robinson, an Afrikander, who has made a huge fortune in Kimberley and in other commercial undertakings in South Africa, has settled in England, but finds it necessary to take a journey to South Africa to superintend important business developments in that country. The length of his absence it is impossible to calculate beforehand; so he finds it desirable to give a power-of-attorney to his solicitors to act on his behalf in certain matters in his absence, and especially in connection with the buying of South African shares in the London market. The sums involved are very large, and the time of purchase will really depend upon his own future knowledge of South African developments, which he can only communicate by cablegram to London. He does not, for obvious reasons, wish to give an unlimited power of purchase in his power-of-attorney, because the sums at stake are so large that he desires (and legitimately desires) to have some controlling voice in their proper expenditure, and he desires that expenditure shall only take place at the actual moment when his future knowledge (which he can only acquire on the spot) will enable him to judge that the right time for buying has come.

Mr. Robinson, in fact, is confronted with a serious difficulty. You cannot give a power-of-attorney with one hand, and take it back with the other. You cannot definitely give your attorney-agent powers of purchase in an instrument under seal, and then revoke, curtail or alter those powers by a lesser instrument. And yet, on the other hand, it is obviously desirable that a man in the position of Mr. Robinson should be able to do something towards directing the expenditure of such enormous sums without incurring the risk of unnecessary loss owing to the dishonesty or negligence of his attorney. The position is to some extent analogous to that of the unlearned testator who, after appointing trustees and directing that they should divide his property amongst his children in a certain definite way, at the end of his will directed that if his trustees should think that another division was desirable they should carry it out in their uncontrolled discretion! Such a direction would, of course, be wholly void in law. You cannot will your property in one way, and then make it possible for your trustees to substitute a will of their own. Apart from all legal or equitable considerations common sense alone shows the impossibility of such a course. Nevertheless, Mr. Robinson's position is somewhat (though not entirely) similar to that of the testator just mentioned; and the question is whether any relief can be afforded him under the circumstances.

Can, in other words, the present law be so manipulated, that by any permissible device the binding character of the original power-of-attorney may be subsequently variated by cablegram or letter?

The answer, at first sight, would appear to be in the negative; and it is interesting to observe how recent is the first decision on the subject, in the leading case of Davy *v.* Waller (81 Law Times, at p. 107.) The case was decided in 1899; and that the point should never previously have given occasion for litigation is a clear proof, if proof were wanting, of the fact that it is only within recent years that any necessity has arisen for attempting to control the authority given in a power-of-attorney by subsequent action on the part of the principal.

The case was as follows: By a power-of-attorney dated the 14th of November, 1890, the plaintiff, Davy, gave to his attorney (Gardner by name) authority to buy, sell, charge, and transfer in any form whatsoever any estate or stocks "*following his letters of instructions and private advices*, which, if necessary, *shall be considered as part of these presents.*"

Acting under the general authority of the power-of-attorney, though without any letter of instruction from the plaintiff, Gardner raised £500 by mortgage from Waller, and the plaintiff, Davy, accordingly applied for a declaration that the mortgage was not binding on him.

The following decision was given by North, J.: "In this case I think that the power-of-attorney authorized the mortgage, although, as between the plaintiff and Gardner, nothing could be more unwarrantable . . . . The power is a printed form in Portuguese, and the limiting words are words used for insertion in any power-of-attorney. The general words, however, authorize the attorney to bind the principal by what he has done, improper as it may be. I do not think the effect of the words, "following his letters of instruction and private advices, which, if necessary, shall be considered part of these presents," can be to prevent the power from operating until further instructions arrived.

The decision given by the learned judge can hardly be questioned. As he points out, if the words "following his letters of instructions and private advices" were to be considered part of the instrument, the instrument itself would not be *de facto* a power-of-attorney at the time it was signed, sealed and delivered. Moreover, another and equally cogent reason might be adduced. A power-of-attorney is an instrument under seal. How then is it reasonable to suppose that it can be altered in effect by a letter of advice not under seal?

Again, if it were really possible to vary a power-of-attorney in the manner intended by the donor Davy, countless occasions for fraud would necessarily arise. One letter might come advising certain steps, which might be contradicted by a second letter revoking the original mandate. How could any person dealing with the donee of the power be assured that the letter of instruction submitted to him was really the final or authoritative mandate of the principal?

Lastly, it is clear that if a power-of-attorney is to be worth anything, it must be a fixed and abiding instrument; and any attempt to alter or vary it by a subsequent letter of the principal is really as opposed to common sense as the attempt of a testator to permit his trustees to vary at their judgment the definite instructions of his will.

Another consideration may be added to what has already been said. The scope of a power-of-attorney is potentially two-fold. It may embrace (1) acts foreseen by the principal, which merely require the signature of the attorney acting in his principal's stead; and (2) acts not categorically foreseen by the principal, in relation to which he must to a greater or less extent rely entirely on his attorney's judgment. The attempt to vary a power-of-attorney by written instructions given by the principal to his attorney subsequent to the actual granting of the power is, so far as the second series of the above-mentioned acts is concerned, a clear and deliberate attempt to create a new power-of-attorney, or even a series of new powers-of-attorney by instruments not under seal. Such an attempt is clearly a frustration of what is now established law that a power-of-attorney must be under seal.

Any direct attempt then to alter the immutable character of a power-of-attorney, such as was attempted by the words employed in the case of Davy *vs.* Waller, seems clearly impossible on first principles. At the same time it must be admitted that the exigencies of modern commerce seem to require the invention, so to speak, of some legal machinery by which a principal in the situation of Mr. Robinson (the fictitious grantor of the power to whom I have just alluded) may be able to direct operations which it is impossible he can foresee in detail at the moment of the granting of the power.

There appear, so far as I am able to see, to be two possible methods of getting over the difficulty. In the first place some such form as the one following might be inserted in the power-of-attorney, namely:

"To register, and in my name and as my act and deed, to sign, seal, execute and deliver as a power of attorney supplementary to this present power, any letter written by me, or any cablegram sent by me, to my said attorney during my absence."

Such a power of creating a supplementary power or supplementary powers-of-attorney would avoid any possible objection being raised, as in the case of Davy *vs.* Waller, against the subsequent documents not being powers-of-attorney, and therefore incapable of altering the scope of the original power-of-attorney. At the same time the procedure is manifestly somewhat cumbrous; while it would expose the principal to possible fraud on the part of his agent. It would, for instance, in such a case, be perfectly possible for the attorney-agent to suppress a cablegram which should contradict a previous letter, and merely register the letter as a supplementary power-of-attorney. So far then as legal efficacy is concerned this form of power would probably be unobjectionable, but there seems to be considerable room for doubt whether it would prove useful as a working form.

Another method has been suggested to me which would certainly avoid this latter objection; while the form has actually been used in a current power-of-attorney. Whether, however, from a legal point of view it would stand the test of a lawsuit, it is very difficult to say. The point, so far as I am aware, has never been decided; and until there is an actual decision in a Court of Equity it is impossible to state with absolute certainty that any new form will be held to be valid. On the whole, however, it seems that for reasons to be presently given, that the form under question would probably be held good.

The method suggested is that of employing a *third party,* namely, the principal's bankers. (Theoretically, of course, any trustworthy party would do; but in actual practice there are manifest and solid reasons why the principal's bankers should be chosen). According to this method, the principal gives authority to his agent-attorney to do such acts *as he may be requested in writing to do by the principal's banker.* The power would run in some such way as follows:

"Know all men by these presents that I, A., etc., hereby appoint B, etc., to be my true and lawful attorney in my name, and in my behalf, and as my act and deed to sign my name to and execute all such deeds, transfers, assignments and other instruments of and relating to the sale or purchase of stocks, shares, debentures and other like property *as he, the said B, shall be requested in writing so to sign and execute by the Manager for the time being of the Bank of ——. In Witness, etc."*

As a good working form there seems much to be said in favour of such a precedent as the above. The principal or giver of the power-of-attorney obtains through the intervention of his banker what is practically absolute security against any fraud on the part of the attorney-agent. Again, for business purposes, a valuable saving of time is effected. The necessity of preparing a supplementary power of attorney on receipt of a letter or cablegram (which would be necessary under the first precedent suggested) would be altogether avoided, and time of the utmost value would thus be saved; for it would practically take the principal no longer to wire to his banker than to his attorney, and the only possible loss of time would be that occupied in the transmission of a written mandate from the banker to the attorney-agent.

For business purposes I hardly see how this form could be bettered. With regard to the legality of such an instrument it is, of course, impossible to speak with absolute certainty; but it would seem on first principles that it is not liable to the same objections as prevented the added words in Davy *vs.* Waller from taking effect. There is no variation or alteration of the power-of-attorney in this case. It remains from the beginning a fixed and unalterable power. It is true that its operation is suspended until a mandate is received from a third party. But that safeguard does not alter the fact that it is an instrument unvarying in character, and not liable to alteration by a subsequent document not under seal. It is a limited power, but it is limited at the moment of its granting, and its character is therefore always essentially the same. This is surely very different from the case of Davy *vs.* Waller, where the power actually given was unlimited; and where the method of controlling it was by subsequent documents not under seal.

The enormous expansion and intricacy of modern commerce certainly require some such development of the power of attorney as shall afford an absent principal adequate protection in directing his affairs from a distance; and I cannot help thinking that in the device suggested a suitable precedent has been found.

R. E. MACNAGHTEN.

"SOCIALISM"; WHAT IS IT?

IT is a far cry from literature to socialism, or rather from what we have been accustomed to regard as literature to that formless and uncouth something which, forever stirring in depths fortunately below the range of vision of a complacent society, has been labelled socialism with characteristically facile inaccuracy. In fact, the gulf between pleasure and pain is scarcely wider. Whatever else may be said of the cry from the depths which, for the last few months, has drowned the silken rustlings, the armored janglings and the amorous whisperings of polite fiction, no one has as yet attempted to gainsay its strident insistence, for while, from their nature, the writings of to-day can be projected only a very moderate distance downward, there is the compensating knowledge that only the most vigorous of shoutings from below is able to so differentiate itself from the clamor of its environment as to obtrude itself on our attention. In the case of "The Jungle," the appeal seems to have been largely through the stomach, which is taking an unfair advantage of a convention-respecting literature.

There is, however, no immediate danger that our ears will be deafened and our susceptibilities outraged by like clamors and alarms during the months to come. To borrow a simile from Signor Marconi, the depths, in this one instance, "happened to find our pitch," and our receiving apparatus, all unwittingly, recorded the messages. A somewhat analogous instance occurred during recent manœuvres of two potentially hostile fleets in the North Atlantic, the result being that meticulous care is now taken to prevent outsiders putting themselves in touch, by intent or accident, with the distribution of intelligence. Hence, because "The Jungle" was intelligible, it by no means follows that the next message will be; conceding the best of intentions, that part of our society which governs is no more able to receive continuous information from a large part of the governed than it is to communicate it. Statutes are not arguments, neither are factory regulations, nor organized charities on the one hand, as against riots, strikes and robbery on the other.

Sinclair has translated into more or less comprehensible English the appeal from the governed, but who is there competent to translate to the governed any new physiological attitude which may be both a result and a reply? Certainly not Sinclair, for the prime requisite in an interpreter is a *quasi* machine-like accuracy, and no one who has labored conscientiously through the hodge-podge of questionable economics and immaterial philosophizing in which he has buried the message he was called to deliver, will accuse him of slavish fidelity to any original. Whatever else may be said of the cause for which he has essayed to be the mouthpiece, it is essentially neither verbose nor discursive, and therein lies its strength—a strength so great as to overcome both the difficulties of Mr. Sinclair's literary methods and the inertia of an audience which would doubtless have remained unmoved had the impulse been directed against any less vulnerable part than its gastric processes. Not having yet risen to a plane of civilization which is aware of digestive organs, it is impossible to reply to the people of the jungle in kind.

Suppose, for the sake of the argument, a mutual willingness to get into communication, how are the basic differences in conception of the subjects under discussion to be reconciled? Tell the people of the Jungle that wealth is the possession, in comparative abundance, of things which are objects of human desire, not obtainable without some sacrifice, but accessible to men sufficiently anxious to acquire them, and learn that wealth is the finished product of a machine we call government which takes all the results of a man's toil except enough to keep soul and body together, and turns it over to others who have no right to it except the right of the strong to take from the weak. Descant on the dignity of labour and hear the rattling of the shackles of an industrial slavery which, if not real, is a sufficiently strong obsession to be real for all practical purposes. Explain the interdependence of master and man and make what you can out of the statement that there are no longer masters but only a system, inexorable, unyielding, not human.

We do not even possess any means of mediation. Oratory, the art of strong, straight speaking, has fallen into disuse with strong, straight speech; the Press is prejudged antagonistic on the comprehensive principle of "all who are not with us—

and with us utterly—are against us"; the Church might have served, since we still humbly modify our civilization by the prefix "Christian," but the church of Christ so long since abdicated its authority to take cognizance of social conditions that it is no less distrusted for its recreancy by the masses than unheeded for its complacency by the classes.

If we are fortunate—more fortunate, perhaps, than we deserve—there may evolve, from the chaos of discontent, a definite and debatable demand for Socialism, which is to say, a readjustment of economic conditions along lines within the purviews of the science of society, yet it is neither safe nor scientific to lose sight of the fact that the socialism of Carl Marx, for example, is as far from expressing the present demands of the majority of those whom we carelessly catalogue as socialists, as the doctrine of the Brotherhood of Man is from the actual ideal of present day society. Blind, unreasoning hate, bred less from envy than starvation of mind as well as body, is not a constructive force, nor one whose activities, once given an outlet, can be again easily controlled; and yet not many months ago the dogma of destruction was openly expounded at a public meeting on the Champ de Mars, nor can the fact that, so far, the proselytizing has not been particularly effective, be ascribed to lack of zealous effort on the part of certain recognized missionaries of the Cause.

Canada's saner growth has, so far, rendered her immune to more than an occasional reflex responsiveness to the agitations in the United States; on this side of the boundary line "wage-slavery" is as yet a menace rather than a condition, but a menace whose potentialities must be recognized universally if they are to be made, as they shall ultimately be made, no less a restraint on the one side than an incentive on the other, Thanks to a vigorous national digestion, the continuance of which is, possibly, due rather to youth and a kindly Providence than to any wise dietary regulations, we have so far been able to assimilate our immigrants with only an occasional and sporadic indigestion, and assimilation is only another phrase for the conferring of equality as far as equality can be conferred. The diagnosing of Canada's national health and the delimitation of her digestive capacity is, however, a matter which is so essentially a function of government that we may, let us hope, safely entrust it to those in authority and proceed on the supposition that the temptation to eat of the rather over-ripe fruit of Europe's surplus population is being carefully guarded against.

But, admitting a salutary regulation of immigration, as long as conditions to the South remain as they are, we are still face to face with the dangers of contagion if not of infection. It is no far cry to the first Bryan-McKinley campaign when Bryan, with his cry of Labour crucified on a cross of gold was possibly more a demagogue, a "leader of the people," than he is to-day with the sanity years and defeats have brought him. Moses in Egypt was not more enthusiastically hailed as the Deliverer of the People, and the Deliverer from whom? From those forces which, rightly or wrongly, a minority of the voters of the United States so considerable as to have been dangerously near a majority believed tended to the subversion of right, liberty and justice. The great issue of ten years ago, clouded as it was by the brilliant campaign tactics of the Republican party managers then and subsequently, has been forced into the background by national prosperity and glossed over by the personality of the most popular First Citizen the Union has known these forty years, but it is still the great question upon whose amicable settlement hinges the continued prosperity of the country.

Our danger does not lie in the issue itself, but in the fact that it is an issue, that one class, with the bitterness of assured conviction, distrusts and fears one other class. Nor can its magnitude be read from surface indications, from perceptible economic movements. "The Social Democracy" is an organization which does not figure prominently in the public prints, at least not in periodicals with which the average citizen is familiar, and yet it is a close combination, widespread throughout the United States, which claims, in the city of Chicago alone, twenty-odd thousand advocates and furnishes the only mental and political pabulum of any kind that nine-tenths, or ninety-nine hundredths, of its members receive. It is no difficult matter, even for those who have not attended one of its polyglot assemblies, to imagine the doctrines inculcated.

Still more difficult to take cognizance of, because infinitely more inchoate and intangible, are the myriad other "centres" of bitter, reckless discontent, which have not yet reached a point of intelligence where organization of any kind is possible, but where the memories of century-old wrongs, brought from the Old World, are grafted on the dwarfed and stunted life-conditions, so pitifully distorted and squalid in the light of unfulfilled expectations, until the fruit is rapine, murder and madness. If to "citizens" such as these, "law" is translated into tyranny, and "authority" into oppression, where does the fault and where the responsibility lie?

Against immediate aggression from this source, through regular and duly constituted channels, the vested interests have little to fear and here again the strange analomy presents itself that this is both a temporary safeguard and a permanent danger, for the misrepresented, however little else they know of the machinery of government, speedily come to a thorough realization of this one fact. Heretofore in the history of the labour movement of the United States, elevation of a representative of the proletariat to municipal, state or national legislative bodies has quite invariably meant sudden surcease of poverty for the individual so elevated, and the consequent translation to a sphere more suitable to one who has grown into recognition of both the value and the methods of exploiting one's fellow-men. Not infrequently the exploited have seen the philosophy of the situation and learned a valuable lesson in practical politics; more often they have manifested a crude discontent at what they have been pleased to call treachery to their cause and become confirmed in the belief that their participation in government must, for a time at least, be confined to securing the highest available price for a vote which was of no particular use to them, no matter what it might be to others. In neither case have the interests of the existing form of "party government" been seriously menaced, nor are they likely to be so long as wealth is divisible and ponderable as against principles.

"When labour becomes soulless, ceasing to minister to fullness of life, increased opportunities for development outside of the industrial field must be to offend," wrote Richard E. Ely. If not, what?

JOHN S. LEWIS, JUN.

Montreal,
Sept., 1906.

THE BANK OFFICER AS STUDENT.

> "Feel then no shame at the desire to learn: for laudable
> Is knowledge; what we blame is not to wish for learning."
> —*Cato.*

THE bank officer in Canada is conspicuously of an athletic *genus.* He is as much at home with paddle and tiller, and with rod and rifle during the summer and autumn months, as with hockey-stick and curling-stone, with toboggan and snowshoe, enjoying to the full the delights of a vigorous winter. He is devoted to every form of that out-door recreation which tends to good health, a wholesome tone and better work—if kept within reason. On the other hand, regrettable to relate, he is not inclined to spend much time at any season over his "Gilbart," or his "Fawcett," or his Bills of Exchange Act. This brief paper is an attempt to draw attention to the real necessity of the study of those subjects kindred, or relative, to his profession on the part of every bank officer, particularly of the younger men of a few years' service at present filling subordinate routine positions, from whose ranks in due time our branch managers of the future must be drawn.

The dominant position held to-day by the banking profession in the financial and commercial world, and its recognized status among the many learned and scientific professions, are not due so much to merit of scholarship, as to that force of circumstances which has placed in its hands the purse-strings, as it were, of every community; on account of the unique nature of the indispensable and confidential services rendered by the banks to the public in general as depositories for funds; as mediums for transfer, collection and remittance; as clearing-houses for settlement; as offices of loan and discount; as bureaus of currency and circulation. While it cannot be denied that the business of our Canadian chartered banks is, generally speaking, admirably conducted upon thoroughly modern (though conservative) lines, yet it is remarkable that, as regards the staffs of these same banks, no higher qualifications nor any more severe tests of efficiency are required than were demanded of the bank clerk a generation back. It is humbling to consider that a druggist's assistant to-day possesses more of professional scholarship and of academic knowledge useful to his calling than does the average bank officer at the outset of his career; the former is launched into the world with that which will ever remain his most valuable asset,—his collegiate diploma and his (possible) degrees.

This neglect of professional scholarship among banking men generally appears the more remarkable when we call to mind the extraordinary, and the highly commendable, advancement in technical tutelage made during the past half century (or less) in so many of what are now recognized among the skilled and lettered professions and callings of good standing. Witness, for instance, the marked progress in (*a*) veterinary science. The "hoss-doctor" of old has passed away, and we have to-day the expert and highly skilled veterinary surgeon holding valuable diplomas, approaching in professional and social standing that of his brothers, the Doctor of Medicine and the Master of Surgery. The same may be said, also, of the modern surgeon-dentist of distinction. (*b*) Dentistry has made immense strides within the last twenty years, and the fully-fledged practitioner of eminence, with his degrees following stiff examinations, is equally worthy of the present position won for himself in the scientific professional world. Again, to turn aside to another and very different calling,—that of (*c*) the stage. We can, many of us, remember the ill-concealed contempt and prudishness with which any person connected with the stage was at one time received, even to the length of declining all access to 'respectable' society, so-called. Yet the theatrical profession is now adorned by its knights and great dames of the stage, honored by all. In the vast field of (*d*) nursing, the utterly ignorant "Sairey Gamp" has been superseded by the highly trained and highly qualified lady of refinement, graduated in every branch of practical hospital work, and capable of acting unerringly in the absence of the doctor. The (*c*) farmer of to-day is no longer the "Hodges" of the smock-frock type, but the certificated product of some well-equipped agricultural college. He has passed a complete course in scientific agriculture and is master of his calling from modern barn construction to specialized cattle diseases; from the chemistry of his native soils and crops to the packing and marketing of fragile fruit and dairy produce. He makes use of the newest labor-saving implements in his fields and pastures; he reads his professional newspapers and magazines to keep in touch with the progress of the great farming and breeding world. Then, again, we have (*f*) railroading; (*g*) forestry; (*h*) journalism; (*i*) librarianships; (*j*) the mercantile marine,— and many further examples which might readily be given illustrative of individual callings or professions, which, by dint of the gradual raising of the standard of scholarship and the resultant increase in the standard of efficiency, now find themselves high among their professional compeers. Each one now enjoys, in most countries, the benefits of advanced technical education under boards of management having authority to hold examinations, and under charters empowering the granting of certificates and (in some instances) degrees to successful candidates.

In view of all this advancement in other directions, it seems pertinent to enquire what recognition is sought, or received, by the banking profession in the curriculums of our Canadian colleges and universities? So far as I am aware, *none* whatever, if we exclude such subjects as mathematics, modern languages and political economy,— subjects taken disjointedly and without particular application to the requirements of banking. No school or college has ever come under my notice at which was offered in its curriculum of tuition a definite and complete course in Banking. The Canadian bank officer is left to his own resources to educate himself (if he so desires) to the best of his ability, unassisted by any.

One occasionally hears disdainful opinions as to the utility of a knowledge of theory, particularly where that theoretical knowledge invades the borders of "practical banking." In banking, we are told, an ounce of practical knowledge is worth many pounds of mere theoretical; that theoretical knowledge is of small use as an adjunct to common sense; that the latter gift, well developed, is the best aid to one's judgment in deciding on one's own responsibility whom one can trust with the bank's money, and for how large (or how small) an amount.

But, the would-be doctor does not ignore theoretical therapeutics, relying upon his own astuteness when he reaches practical clinics to offset his ignorance of the principles of the science of healing; neither does the ship's mate, entering for his captain's certificate, attempt to pass without a book-knowledge of theoretical navigation. Still, both of these occupations are emphatically *practical* in nature. On the other hand, there is always, admittedly, the danger of exaggerating the importance of theoretical knowledge, as it is possible to carry anything to extreme. Two cases in point. We have heard of a certain gentleman in holy orders who was so saturated with abstruse and abstract theology that both true religion and manhood were effectively stifled. Secondly, an army officer may have a profound knowledge of the history of warfare from Hannibal to Kitchener, and yet be quite at sea when handling men in the field or on active service. These are, of course, unusual cases. The fact remains that theory is the foundation of practice; and the bank officer who desires to obtain a true and complete understanding of the actual and visible executive routine of his banking office and of its many departments, cannot afford, from a mistaken idea, to exclude all cognizance of its theory and principles.

We hear on all sides that this is an age of strenuous activity; of pitiless competition; of universal specialization. We might well add that it is also an age of assiduous educational training and of a high level of individual efficiency. If a bank clerkship in the future is to rank above the standing of an ordinary mercantile clerkship, the time has surely come when the technical instruction of the prospective bank officer should be undertaken as thoroughly and systematically as has been found imperative in other professions.

The advisability of affording the bank officer, willing and anxious to learn, opportunities for improving his knowledge in technical subjects has been recognized for many years in Great Britain and Ireland, and efforts in this direction have been attended with excellent results. If, in the Mother Country, where the world of sport commands as much serious attention (at least) as the sterner duties and the graver occupations of life; where it is followed even more consistently than politics, and more fervently than business or any other pursuit; where, at the schools, junior masters are chosen more for their prowess at games than for distinction in the classics, and where the long drawn-out cry of "Follow up, School!" drowns the plaudits accorded by the few to the successful scholar,—if, in the Mother Country, under conditions such as these, practical solicitude for the intellectual welfare and advancement of the bank officer has taken such deep root and for so many years has borne such good fruit, surely we, in Canada, would do well to follow in the same footsteps? Other British Colonies do not seem to be very far behind the Mother Country, if we may take the Bank of New South Wales, Australia, as an example. The Bank of New South Wales, with Head Office at Sydney, N.S.W., possesses an extensive library for the use of the staff, for which a complete revised catalogue is compiled every second year, and a supplementary catalogue containing new additions is published quarterly; it has a Musical and Dramatic Society, and a Recreation Club embracing nine different sections or minor clubs; it arranges, for the instruction and amusement of its staff, lectures, prize competitions and various entertainments — everything, in fact, that may stimulate and develop both the intellectual and the social sides.

I have before me the examination papers of the (*a*) Institute of Bankers, London, for the years 1905 and 1906; of the (*b*) Institute of Bankers in Scotland for 1905; of the (*c*) Institute of Bankers in Ireland for 1906.

The examinations of the (*a*) Institute of Bankers, London, are two in number, *viz.*, "Preliminary" and "Final," with the lapse of one year between each; the latter entitles a Member to become an Associate, and to be awarded the Certificate of the Institute. The subjects taken are:—

I. Political Economy.
II. Practical Banking.
III. Commercial Law.
IV. Arithmetic and Algebra (Preliminary only).
V. Commercial Geography and History (Final only).
VI. Book-keeping.
VII. French (Voluntary subject).
VIII. German (Voluntary subject).

There are three examinations in all held by the (*b*) Institute of Bankers in Scotland, *viz.*, for admission as (1) Associates; as (2) Members; as (3) Members with Honours.

(1) The *Associates'* Examination embraces ten subjects:

I. Arithmetic.
II. Algebra.
III. Geography.
IV. Note Circulation.
V. Interest and Charges.
VI. English Composition.
VII. Bookkeeping and Bank Books.
VIII. Exchange and Clearing House System and Rules.
IX. Negotiation of Bills and Cheques.
X. History and Present Position of Banking in Scotland.

(2) The *Members'* Examination has nine subjects:—

I. Principles of Political Economy.
II. Stocks and Stock Exchange Transactions.
III. History and Principles of Banking and Currency.
IV. Theory and Practice of Foreign Exchanges.
V. Principles of Scots' Law and Conveyancing.
VI. Law of Bankruptcy.
VII. Mercantile Law.
VIII. Law of Bills, Cheques and Deposit Receipts.
IX. Practical Banking (Correspondence — Branch Supervision — Advances).

(3) The *Honours* Examination subjects are:—

I & II. Modern Languages (French and German).
III. British History.
IV. British Constitution and Government.
V. English Literature.
VI. General History.

The examinations of the (*c*) Institute of Bankers in Ireland are also two in number,— "Preliminary" and "Final,"—

and the syllabus of subjects is identical with that of the London examinations with the addition to the former of English Composition (Essay writing only).

From some of these papers I select as examples the following questions to show (so far as a few examples can show) the extent of ground suggested by these questions as necessary to be covered by the preparatory work. Many of them are not, of course, applicable to Canada; yet they, too, will serve to illustrate what is expected of our brother bank-officers by the Examining Boards of the three leading Associations of Bankers in the Old Country.

(April, 1906). INSTITUTE OF BANKERS, LONDON.

Political Economy. (Preliminary).

Question 3.—"National efficiency sums up the practical aim of economic enquiry." Interpret the phrase *national efficiency* and discuss this statement. Illustrate from the increased efficiency arising from the introduction of (1) machinery, (2) paper money, (3) banking, (4) a system of organized industry on a large scale.

Question 7.—Distinguish the different elements that enter into gross profits on capital. In each of the following cases point out the element which is most prominent; the interest paid (1) to a money lender, (2) to a pawnbroker, (3) as dividends on railway shares, (4) on banker's capital.

Political Economy. (Final.)

Question 1.—State clearly the Economic Law of Diminishing Return, and indicate the scope of its operation. Show how wages, profits, rents, and prices respectively are affected by the law. How are its effects often counteracted?

Question 4.—The excess of imports over exports is sometimes stated to be due to living upon capital. Explain fully what is covered by the terms *imports* and *exports*; account for the excess, and adduce evidence to show that Great Britain is not living upon her capital.

Practical Banking. (Preliminary).

Question 3.—What is meant by "discounting" a bill? Describe the entries made in a banker's books to carry out the operation.

Question 6.—What is the meaning of the following indication upon a bill of exchange?—"*In need with Messrs. A. & Co.*"

Practical Banking. (Final).

Question 1.—Give some account of the Bank Act of 1844, distinguishing its three principal enactments, and describing their objects.

Question 7.—A. B & Co., of Antwerp, have drawn upon —— Bank, London, a draft for £500—at 3 m/d. instead of at 30 d/st. Write a letter from the bank acknowledging the receipt of advice, and pointing out that the draft in question differs from the terms of the credit opened and cannot be accepted.

Commercial Geography and History. (Final only).

Question 6.—State the main features of the trade of Galveston, Odessa, Rotterdam, St. John (New Brunswick), and Santiago de Cuba,, adding such geographical explanations as may be required.

Question 8.—Mention any parts of India and Ceylon that get the bulk of their rain during our winter months. Explain this as fully as you can, and state why this distribution of the rainfall is exceptional in those parts of the world.

Commercial Law. (Preliminary).

Question 4.—Are any, and if so, what, documents, bills of exchange within the Stamp Act, 1891, which would not be so under the Bills of Exchange Act, 1882?

Question 10.—Distinguish between a "holder" and a "holder in due course."

Commercial Law. (Final).

Question 4.—Distinguish between a contract of sale and one for work and labour. Under which head would you place (*a*) an agreement to paint a picture; (*b*) an agreement to provide a set of false teeth?

Question 6.—A bank agrees to advance up to £5,000 on first mortgage of property. When £3,000 has been advanced, the bank receives notice that the mortgagor has raised money elsewhere on a second mortgage of the same property. What is the bank's position?

(March, 1905). INSTITUTE OF BANKERS IN SCOTLAND.

Division I. **Associates' Examination.**

Geography.

Question 2.—Name the chief countries from which we import wheat, tea, coffee, eggs, butter, wool, jute, and tin.

Question 3.—State where each of the following places are situated, and for what it is noted:—Odessa, Herat, Ghent, Adelaide, Lhassa, Kimberley, Dunedin, Rio de Janeiro.

Bookkeeping and Bank Books.

Question 4.—On which side of the published balance-sheet of a bank should the following items be found:—Capital, investments, advances on accounts, deposits, notes in circulation, reserve, cheques in the course of transmission?

Question 6.—Trace the entries in ordinary course necessary in connection with a demand draft on London granted by a Country Branch, from its issue to its payment.

Exchange and Clearing House System and Rules.

Question 2.—Give the rule of the Edinburgh Clearing House which facilitates the punctual presentation of country bills at place of maturity.

Note Circulation.

Question 2.—How would the Act of 1844 or 1845 operate in the following cases?—

(*a*) A new bank commencing business in Edinburgh in 1905.

(*b*) An English bank surrendering its note issue.

Question 4.—Explain the important provision regarding Scotch Bank note issues in the Act of 1879.

Interest and Charges.

Question 1.—A customer lodges for collection with his banker in Edinburgh four bills of £1,000 each, payable in Dundee, Cork, London, and Chicago respectively. State the charge for commission on each (*a*) if paid, (*b*) if returned dishonoured.

Question 6.—In what circumstances is no interest allowed on a Deposit Receipt? State what you know about Compensating Interest.

Negotiation of Bills and Cheques.

Question 3.—Give the stamp duties applicable to the following:—(*a*) a bill for £250, payable three months after date, (*b*) a promissory note for £550, payable on demand. Can either or both be stamped after completion?

Question 6.—What do you consider the correct form of endorsement in each of the following cases:—(*a*) a cheque payable to Mrs. James Thomson, (*b*) payable to "The Dundee Salvage Co.," (*c*) where the payee's name is mis-spelt?

History and Present Position of Banking in Scotland.

Question 3.—When the Scotch banks issued notes prior to 1844, under what authority did they do so?

Question 5.—What are the principal Scotch banking failures during the last fifty years, and (*a*) what, in round numbers, were the amount of liabilities to the public at date of failure, (*b*) the calls made upon the shareholders, (*c*) the amount of their fixed issues?

Division II. **Members' Examination.**

Principles of Political Economy.

Question 3.—Define Value, and explain the proposition:—"A general rise in values is impossible."

Question 5.—State Adam Smith's four Canons of Taxation, and critically examine the principle of Equality of Taxation.

Stocks and Stock Exchange Transactions.

Question 2.—In taking in stock in security of advances, what is a good delivery to a bank of (*a*) British Registered Railway Stock, (*b*) Inscribed Stock, (*c*) American Railway Shares, and (*d*) Bearer Bonds and Share Warrants; and how is the bank's title completed in each case, and its relation to its debtor properly secured?

Question 3.—What are the more important points to be kept in view in buying Foreign Government Securities, especially those which have dividend and principal payable abroad?

History and Principles of Banking and Currency.

Question 3.—What are the advantages and disadvantages of a State issue of notes?

Question 4.—State the arguments for and against the "Cash Credit Account" as used in Scotch banks.

Theory and Practice of Foreign Exchanges.

Question 1.—Explain fully (*a*) what the Foreign Exchanges are, (*b*) the great basis of international indebtedness, (*c*) the chief function of money, and (*d*) the theory of the Exchanges, stating how the settlement is effected.

Question 4.—What is the significance of the following terms, viz.:—"rise," "fall," "high," "low," "favourable," and "unfavourable," when applied to rates expressed in foreign money? Illustrate how "high rates in foreign quotations are for us, and low rates against us."

Principles of Scots' Law and Conveyancing.

Question 1.—How are Deeds executed by the following, and how many witnesses are required in each case?

(*a*) An individual who is blind.

(*b*) A married woman.

(*c*) A person resident abroad.

(*d*) A limited company.

Question 5.—What is *donatio mortis causa,* and how may it be proved? In what respects does it differ from a legacy?

Law of Bankruptcy.

Question 1.—What is meant by the Act and Warrant in favour of a trustee in sequestration, and what is its effect?

Mercantile Law.

Question 1.—Under what circumstances may an individual share in the profits of a business and yet not be liable as a partner? Is the assignee of a partner's interest in his firm personally liable for the firm's debts?

Question 4.—State the objections, if any, to a bank holding as security an unregistered transfer of shares? Is an unregistered transfer of shares affected by the death or bankruptcy of the grantor, and, if so, to what extent?

Law of Bills, Cheques, and Deposit Receipts.

Question 1.—State the various ways by which a bill of exchange may be discharged. Definite (*a*) delegation, and (*b*) novation.

Question 2.—Define an accommodation party to a bill. A bill is accepted by A for the accommodation of B, and the bill is discounted by B with the Glasgow Bank. Explain the legal position of both the bank and B to recover from A the amount of the bill.

Practical Banking.

(*Correspondence*) *Question 3.*—Report to your Head Office the result of a meeting of the creditors of one of your customers who has obligations at the Branch, and state, with details, whether you consider that the bank is likely to suffer any loss.

(*Branch Supervision*) *Question* 2.—What duties do you consider ought to be discharged by an Agent so that he may have a thorough control of the business of his Branch?

(*Advances*) *Question 5.*—A firm's bank account is considerably overdrawn and no security is held. The partner who owns the most of the firm's capital intimates his retiral. What steps, if any, would you consider it necessary for the bank to take if the advance is not paid or secured?

Division III. **Honours Examination.**

British History.

Question 3.—Write brief notes on:—Danegeld, the Star Chamber, the Regent Murray, the "Alabama," Queen Elizabeth's favourites.

Question 5.—Trace the growth of parliamentary power in the 17th century.

British Constitution and Government.

Question 1.—Give a short account of *each* of the following:—Customs Dues, Nonjurors, Convocation, the Convention, the National Debt.

Question 3.—Trace historically the judicial powers of the House of Lords; *or,* outline the relation between Church and State in Scotland from Reformation times.

English Literature.

Question 1.—Who are the authors of all of the following?

Give a brief account of any *four* works:—Past and Present, The King's Quhair, The Analogy, Hudibras, The Tempest, The Antiquary, Vanity Fair, The Princess.

Question 4.—What do you consider the Augustan age of English Literature? Name the chief authors and their works.

General History.

Question 2.—Outline your knowledge of (*a*) Egypt in the 19th century; *or,* (*b*) Japan from 1867; or, (*c*) the interaction of the Romans and Teutonic constitutions in Europe upon one another.

Question 3.—Explain clearly any *three* of the following:—the Aryan Dispersion, the Forest Cantons, the Monroe Doctrine, Vandals, Arbitration, the German Diet and Electors.

(April, 1906). INSTITUTE OF BANKERS IN IRELAND.

Political Economy. (Preliminary).

Question 5.—Write *short* explanatory notes on any *two* of the following:—(*a*) Mr. Wakefield's theory about Colonization; (*b*) The Schultze-Delitzsch and Raiffeisen Credit Banks; (*c*) Gresham's Law and its application to Bimetallism; (*d*) Define the terms "rack-rent," "metayer tenure," cottier tenancy," and "conacre."

Political Economy. (Final).

Question 5.—Define both the *demand curve* and the *supply curve* used by Marshall. How does he combine the two to prove that the market price of a commodity is in stable equilibrium only when the demand at this price is exactly equal to the supply at this price. (You may assume that the commodity is one the production of which is governed by the Law of Diminishing Return.)

Practical Banking. (Preliminary).

Question 7.—A cheque is crossed to two different banks; when may the banker pay, and when must he refuse payment?

Question 9.—Describe the process of buying and selling on the Stock Exchange. What peculiarity is there about the Consols market? Explain the following terms:—Settlement, account, broker, dealer, dealers' turn, quotation.

Practical Banking. (Final).

Question 9.—State Rae's observations on the following forms of collateral security:—Securities to Bearer, Railway Stock, Transfers in blank, House Property.

Question 10.—Explain the general principle of the Foreign Exchanges. What is meant by "mint par" and "specie points," and why cannot the latter be fixed with exactness?

Commercial Geography and History. (Final only).

(*Geography*) *Question 8.*—Write notes on any *three* of the following, viz:—(*a*) The meat supplies imported into Great Britain. (*b*) The "Black-Earth" district of Russia. (*c*) The "entrepôt trade" and the "transhipment trade" of Great Britain. (*d*) The "Corn-Belt" of North America. (*e*) The Ship Canals now open in the world (*f*) The Petroleum Industry, its nature and location.

(*History*) *Question 10.*—Describe the commercial policy and wars of Cromwell. Discuss the consequences, good and bad, of his Navigation Laws, 1651. When were they repealed?

Banking and Commercial Law. (Preliminary).

Question 9.—Is it a bank manager's duty to inform an intending surety of the state of his principal's account? Write a short note on *Whan v. Bank of Ireland.*

Banking and Commercial Law. (Final).

Question 1.—"Possession gives title." How far is this doctrine recognised by the Factor's Act, 1889?

Question 10.—State shortly the points decided in the following cases:—"*Rainford v. Keith,*" "*Vinden v. Hughes,*" "*In re Dillon,*" "*Whan v. Bank of Ireland.*"

I have omitted to extract from any paper in Arithmetic, Algebra, Bookkeeping, English Composition, or French or German, on account of the nature and lengthiness of the questions, and from the fact that the scope covered by them in each of these subjects can be better described in terms than by quotations. Firstly, in Arithmetic, vulgar and decimal fractions are required, also simple and compound interest, profit and loss, simple problems, investment operations, foreign tables, etc. The Algebra papers embrace the four simple rules, fractions, resolving into factors, simple and quadratic equations, problems leading to equations. The papers on Bookkeeping set by the Institute of Bankers in Scotland deal mostly with Bank accountancy, while those of the Institutes of London and of Ireland refer only to commercial bookkeeping,— definitions and general principles of bookkeeping, single and double entry. The English Composition papers require principally the writing of essays, but they also test the knowledge of English Grammar. The voluntary papers in French and German include translation of unseen selections of phrases and idioms; also questions in Grammar and foreign business correspondence.

Not only are Certificates and Diplomas awarded, but money prizes, also, are offered by the three Institutes referred to; by individual members and associates; by liberal friends of the bank officer throughout England, Scotland and Ireland. The ten Scottish banks in 1905 paid in bonuses to successful candidates an aggregate of upwards of £1,800, the uniform bonus being £5 to each student passing as Associate, and £10 to each passing as Member. The number of candidates presenting themselves for examination at the various Scottish centres alone in 1905 was no less than 706, against 613 in the previous year, and 378 in 1895. The net result of the 1905 examinations of the Institute of Bankers in Scotland is appended herewith and is of considerable interest:—

	Passed.	Partial Pass.	Failed.	Total.
Associates' Degree..	243	266	13	522
Members' Diploma.	64	91	3	158
Members' Honours.	13	12	1	26
Totals	320	369	17	706

Complete lists of text-books and of standard authors recommended in every subject are published by each of the Institutes for the guidance of students preparing for the examinations.

The conclusion that the majority of readers, after perusing carefully the foregoing questions, will have arrived at, is, probably, that a considerable amount of ground is covered by the papers extracted from and that a candidate must, of necessity, be a thorough all-round man in order to pass successfully. Without doubt much close preparatory work is necessary, especially on the part of men who have left their schooldays behind them a good many years; but, if such creditable results as those shown by the statistics of the Institute of Bankers in Scotland (above) can be obtained in that country, it is not unreasonable to expect that, with due preparation and hard work, results of equal excellence could be attained in Canada?

It will be noticed that these examinations are for *bank officers,* not for *prospective* bank officers; they are in no way entrance examination. I think that this matter of education could, with profit, go even further, the would-be bank officer being prepared at college with the definite idea of entering the service of a bank, not, as at present, *drifting* into it without previous technical tuition of any kind. True, some of our Canadian banks do have elementary examinations which every applicant for a clerkship is required to pass, but they deal with little beyond handwriting, dictation, spelling and simple arithmetic. Provided the applicant satisfies a Head Office as to these elementary qualifications, he is instantly snapped up in these times when the dearth of suitable bank juniors is so general, in spite of the fact that he may be wholly ignorant of many things it would be better both for him and for his bank that he should know before joining. The trivial bank entrance examination might well be dispensed with in favour of a collegiate (or university) examination following a thorough course in banking and kindred subjects, as is the case in every other profession. One in particular — the midshipman of the King's Nav*ee* is caught at, or before, the youthful age of thirteen; the upward course of his promotion from the gun-room to the stern-walk is punctuated by examinations to test his efficiency and his ability to assume the responsibilities of the rank next in seniority. So, in like manner, should your banker *in embryo* be taken in hand at an early age. I may add, in conclusion, that one of the chief of present drawbacks in imparting instruction to the newly-joined bank junior is the absence of any one authoritative *Text-Book* which could be placed in his hands. and from which he could readily obtain a really working knowledge of practical routine and procedure as we know it in Canada.

My subject is no new one. *"Ye lyfe so short, ye craft so long to lerne,"* wrote Chaucer five centuries ago.

A. GORDON TAIT.

The Royal Bank of Canada,

Montreal, 10th August, 1906.

NOTE.—The *Monetary Times*, of Toronto, in its issue of 10th August, 1906, reports that the New York University School of Commerce, Accounts and Finance has just arranged for a one-year course in finance for employees of banking and brokerage houses. The following are some of the subjects included in the course:—Theory of Banking; Banking Practice; Foreign Exchange; Commercial Law; Political Economy; Corporation Finance. Lectures are to be given on such topics as "Investment and Speculation"; "Sources of Funds seeking Investment"; "The course of Bond Valuation for the last Twenty Years," etc.

Commenting upon the above in an editorial, the *Monetary Times* says:—

"Elsewhere there is notification of the pending course of "instruction to clerks in New York banking and financial institu-"tions, which is intended to assist their qualification for advance-"ment from the daily routine of the pen to the executive eminence "of the manager........The Bankers' Institute in England has "periodical examinations for bank clerks; and the branches of the "Institute, such as that at Manchester, carry on an educative pro-"paganda of their own, by lectures and competitions........Judging "by the questions put to examinees, the aspiring British bank clerk "is expected to be lawyer, financier and *litterateur* combined. There "are several thousand clerical employees of banks in Canada; and "perhaps a couple of thousand young men in other commercial and "banking institutions for whom some such course of instruction as "those which are given in New York, London, Manchester and other "centres, would be desirable. Then there are thousands of others "on the threshold of commercial life for whom instruction more "immediately practical than that which they obtain in the schools "would be of great worth when they came to earn their own bread. "It is not easy to devise a method by which educational advantages "to be secured through one organization, can be spread effectively "across the whole continent. But something of the kind might be "attempted........"

A. G. T.

LECTURES ON THE BANK ACT.

No. 3.

THE BUSINESS AND POWERS OF BANKS.

Copyright 16th March. 1906.

A. RIVES-HALL.

WE noticed in our opening lecture that our banks combine the three powers enjoyed by Banks of Issue, Banks of Discount, and Banks of Deposit. The sections of the Act that will now engross our attention for several lectures, sections 64 to 83 inclusive, regulate and govern the operations of Banks as Banks of Discounts, using the term discount in its widest sense.

Apart from issuing notes for circulation, and receiving deposits, it may be said in a general way that banks are authorized to deal in money and documents for the payment of money. These latter they may buy, sell, discount, lend money upon or take as collateral security for loans; but, except as authorized by the Act, they are prohibited from dealing in goods or lands or lending money upon their security. That this prohibition is both wise and necessary is obvious when we consider that it is of the utmost importance that the bank's trading capital should at all times be readily available; its resources are taxed to the limit at certain seasons of the year, and to tie up its moneys in real estate would be an error that might at any time prove fatal to its progress if not its very solvency.

Section 64—" The Bank may open branches, agencies and " offices, and may engage in and carry on business as a dealer " in gold and silver coin and bullion, and deal in, discount and " lend money, and make advances upon the security of, and " may take as collateral security for any loan made by it, bills " of exchange, promissory notes and other negotiable securities, " or the stock, bonds, debentures and obligations of municipal " and other corporations whether secured by mortgage or other- " wise, or Dominion, Provincial, British, foreign or other public " securities, and it may engage in and carry on such business " generally as appertains to the business of banking:—"

Branch Banks.

The first question to be discussed under the section is the nature and powers of Branches.

The advantage of our system of Branch Banks was well described by Mr. Walker in a paper read before the World's Congress of Bankers and Financiers at Chicago some years ago, with which admirable review of Banking in Canada you are all doubtless familiar,— Mr. Walker says:—

"In a country where the money accumulated each year by the people's savings does not exceed the money required for new business ventures, it is plain that the system of banking which most completely gathers up these savings and places them at the disposal of the borrowers, is the best. It is to be remembered that this involves the savings of one slow-going community being applied to another community where the enterprise is out of proportion to the money at command in that locality. Now, in Canada, with its banks with forty and fifty branches, we see the deposits of the saving communities applied directly to the country's new enterprises in a manner nearly perfect. The Bank of Montreal borrows money from depositors at Halifax and many points in the Maritime Provinces, where the savings largely exceed the new enterprises, and it lends money in Vancouver or in the Northwest, where the new enterprises far exceed the people's savings . . . . the whole result being that forty or fifty business centres, in no case having an exact equilibrium of deposits and loans, are able to balance the excess or deficiency of capital, economizing every dollar, the depositor obtaining a fair rate of interest, and the borrower obtaining money at a lower rate than borrowers in any of the Colonies of Great Britain, and a lower rate than in the United States except in the very great cities in the East . . . . The business of these banks is thus to gather up the wealth of a nation, not a town or city, and to supply the borrowing wants of a nation."

The characteristics of a Branch Bank are summarized by Gilbart as follows:

1. It may be supposed to possess greater security, having behind it the capital and assets of the whole establishment.

2. It would command the use of a greater capital, because of its larger number of shareholders, and because the confidence it possesses would create more banking capital by attracting deposits.
3. It would do business with the public on lower terms, being able to distribute its capital evenly.
4. The expense of managing a branch must be less than that of managing an independent Bank.
5. It would be less liable to lose by indiscreet loans from personal friendship or imperfect information.

The head office and all its branches constitute together only one corporation or firm; but each branch is a separate agency of the common principal.

Where notice, then, affects the liability of a bank, it is not necessary that it should be given to all the branches. It is sufficient to give notice to the head office, and this will be good against all the branches after a sufficient time has elapsed to allow of its being sent from the head office to the branches. (*Willis* vs. *Bank of England,* 4, A. & E. 21 [1835]).

For the purpose, however, of estimating the time within which notice or dishonour should be given, each branch must be regarded as distinct from the head office and from the other branches. They are then regarded as agents and are treated successively as if they were holders.

In considering whether notice of dishonour was given in time, it was thought reasonable, in *Prince* vs. *Oriental Bank* (L.R. 3, A.C. 325) that the bill should be sent successively to the branch banks through which it had come to the principal bank, before giving the notice. It was pointed out that it was not possible for the bank in London to know from whom the bill came; therefore, it was necessary, in the ordinary course of business, that it should be sent to the branches before notice of dishonour should properly be given."

In that case a note was paid in at the head office and transmitted to a branch where it was payable, and the signature there cancelled. The head office was notified and the amount credited; but before the customer was advised, it was discovered that the note should not have been marked paid. It was marked "cancelled in error" and the entries reversed. It was held that the bank had a right to do so.

For the payment of cheques, however, the branch is considered as distinct from the head office or other branches, and in the absence of express agreement, the bank is bound to recognize a balance in favour of his customer only at the office upon which his cheque is drawn.

Accordingly, if a cheque drawn on one branch is, in fact, cashed by another, the latter does not act in the matter of cashing it as the bank of the drawer, but is held to rely upon the credit of the person presenting it, and in the event of dishonour may charge it back against the latter's account.

The bank enjoys an advantage over its customer, for on the principle that with its branches it forms one legal entity, if a customer has accounts at two or more branches, the bank may consolidate them, and a cheque may be refused even when there appears to be money to his credit, if upon the whole there are not sufficient funds. (*Garnett* vs. *McKewan,* L.R. 8, Ex. 10). For instance, although the cheque were drawn on an account sufficiently in credit, if another account were overdrawn, the bank could consolidate the two before paying the cheque, and refuse to pay, were the ultimate balance insufficient. For, whether the bank is indebted, and to what extent, to a customer, depends upon the balance on all the accounts between them; and except in so far as that balance is in favour of the customer, there is no obligation to pay money to him, or his order, either by honouring his cheques or otherwise.

But this consolidation must not be effected arbitrarily and without notice. (*Buckingham* vs. *London & Midland Bank,* 12 T.L.R. 70 (1895). The bank opened two accounts with a customer, a loan account and a drawing account. It closed the latter by transferring the balance to the loan account in reduction of the customer's debt. At the time there were bills and cheques of the customer outstanding, which, on being presented, were dishonoured. It was held that in view of the course of dealing, the bank was not entitled to close the current account without reasonable notice, and the customer recovered £500 damages.

This right of consolidation would protect the bank in case of insolvency. It could apply a credit in a current account in reduction of a debt on a loan account, although, under ordinary circumstances, the assets of a debtor are the common gage of all his creditors who are, in the event of his insolvency entitled to share ratably. This is so on the ground that at common law, insolvency does not bar the compensation of two debts equally *claire et liquide.* (Desmarteau-Darling, 12 S. 212).

Our Code says, Article 1188, compensation takes place by the sole operation of law between debts which are equally liquidated and demandable and have each for object a sum of money or a certain quantity of indeterminate things of the same kind and quality. So soon as the debts exist simultaneously they are mutually extinguished so far as their respective amounts correspond.

This question will be discussed more fully when we deal with Bankers' Lien, in the meantime, it is sufficient to point out that the right accrues even in the case of unmatured bills, as the Civil Code declares (art. 1092) that a debtor cannot claim the benefit of a term, when he has become a bankrupt or insolvent, or has by his own act diminished the security given to his creditor by the contract.

Being one legal whole a bank is bound to know the amounts of its own drafts, and if one branch pays a draft drawn by another branch, the amount of which had been fraudulently raised, the bank cannot recover the money from the holder who has acted in good faith.

Union Bank vs. *Ontario Bank,* 9 R.L. 631.

The Bank as a Dealer.

It will be seen that the terms of the Act, in addition to the right to discount, lend money and make advances and take certain collateral securities, permit the bank to deal in "gold and silver coin and bullion, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of corporations."

"Dealing" in these instruments and securities, as distinguished from discounting or lending money or making advances on them, would ordinarily mean buying and selling them outright without an endorsement of them by the customer, or with an endorsement "without recourse" when they are payable to his order. This is the usual way in which these instruments and securities—except bills of exchange and promissory notes—are disposed of. In that event the seller simply warrants that they are genuine, and that he has a right to transfer them, and that he is not aware at the time that they are valueless, practically the same warrants as if he were selling coin or bullion.

As provided by the Bills of Exchange Act (Sec. 58) when the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a "transferrer by delivery," and he is not liable on the instrument. He warrants only to his immediate transferree, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of the transfer he is not aware of any fact which renders it valueless.

For instance, when an agent got a bank to discount a bill drawn and endorsed in blank by his principal, and then paid over the money to that principal, without any knowledge that the signature of the acceptor was a forgery, he cannot be compelled to repay the bank, although his principal had in the meantime become insolvent. (*Ex parte Bird,* 4 DeG. Sm. 273).

The warranty of genuineness is an incident of the contract of sale, and it is immaterial whether the thing sold be a bill or any other personal chattel. The transferrer is for this purpose an ordinary vendor.

In legal language, a bill is said to be sold when it is transferred under the provisions of this section, but you are all aware that it is not so in mercantile language. Ordinarily, we speak of buying and selling bills of exchange, when the contract is in reality a remittance to a creditor in a distant place, in which event all the ordinary warranties attach to the bill.

Discounting.

I may hazard the opinion that it is rarely the custom of banks to deal in bills or other commercial paper in the sense of buying and selling. Such documents are usually taken from customers, who, whether endorsers or not, are guarantors in every sense, and undertake to reimburse the bank in the event of the bills dishonour. This is what we all understand by the term "discounting." The ordinary definition of the term *discount* is an allowance or deduction according to the rate of interest for money advanced before it is due; it is the difference between the price paid and the amount of debt, the evidence of which is transferred.

A considerable branch of the business of modern banks consists in discounting bills of exchange. As they have only a short time to run before they fall due, the capital advanced soon returns; and, being transferrable, they can, if necessary, be re-discounted. Discounts are, therefore, readily adapted to the purposes of the banker for, as the advances of bankers to their customers are made with other people's money, and that money may at any time be withdrawn, it becomes necessary that the securities on which these advances are made should rapidly revolve, and be at all times convertible. By means of bills of exchange bankers can easily extend or diminish their advances in proportion to the capital they may have to employ. If they find that the amount of their deposits or the amount of their circulation is diminishing they will diminish their discounts, if they increase, they may increase their discounts."

Discounting, then, as carried on by banks is essentially a form of lending. A bill is discounted when, in consideration of a sum paid by the bank, the transferor endorses the document to it, or when, without endorsement, he becomes liable to the bank by agreement or custom in respect of the payment of the amount of the bill.

Discount differs in effect from the sale of a bill, and also from its pledge. A bill is pledged when the holder, in consideration of a loan deposits the bill with the lender merely as security. In this case the interest of the lender in the bill is limited to the amount secured by the deposit. (Hart, p. 589).

It is convenient to bear in mind that the word "discount" is often used in a very elastic and comprehensive sense.

"By the language of the commercial world and the settled practice of banks, a discount by a bank means, *ex vi termini,* a deduction or drawback made upon its advances or loans of money upon negotiable paper, or other evidences of debts payable at a future day, which are transferred to the bank . . .

If, therefore, the discounting of a promissory note, according to the usage of banks, be a purchase . . . . it is a purchase by way of discount."

Whether a bill has been deposited or discounted depends not merely upon the fact of endorsement, but upon the intention of the party remitting it. Indorsement is *prima facie* evidence of discount. But if the bill is remitted indorsed merely to enable the person receiving it to raise money to meet future advances, while retained it is merely a deposit applicable to the demands of the remitter. The question is whether the indorsement was intended to effect an absolute transfer, giving full power to go against all parties on the bill, or merely to enable the person with whom it is deposited to receive the amount from the other parties.

This is in effect a sale with warranty. The bill or note becomes the property of the bank absolutely, and it agrees to look in the first instance to the acceptor or maker for payment, and to the customer only in case of their default of payment at maturity and on notice to him of such default.

A bank may discount a cheque as well as a bill or note. If this is done without getting the customer's indorsement he can neither be sued upon it nor directly for the money advanced him.

The Position of the Banker.

The banker is, of course, a holder for value on the presumption that value has been given for it at some time. He may not be a holder in due course, for he may have taken the bill after maturity or dishonour, or without having given value himself. It is sufficient, however, that some previous holder has done so in order to enable him to recover on the bill from the prior parties.

And if the bank has taken the bill or note as collateral security it is deemed to be a holder for value to the extent of the sum for which he has a lien (B/E Act, p. 27, s. 2).

As a holder for value the bank assumes all the risks of ownership, and its only recourse against the customer as already indicated, is in the event of dishonour by the acceptor or maker. This is clearly laid down in the leading case of *Carstairs & Bates* (3 Camp. 301).

The assignees of a bankrupt banker sued the acceptor of a bill of exchange drawn by one Allport to his own order and endorsed by him to the banker, who had discounted the bill for him, placing the amount less the discount to his credit as cash. It was contended by the defendant that the action could not be maintained as the bill remained the property of Allport. Lord Ellenborough said:—" The bankers were the purchasers of this bill." The whole property and interest in the bill vested in themselves, and they stood all risks from the moment of the discount. If the bill had been afterwards stolen or burnt, their would have been the loss.

So also, where a customer gets his bank to discount a bill at a time when his account is overdrawn, and the amount is simply carried to the credit of his account, the bank is a holder for value. (*Bk Hochelaga* vs. *Grenier,* 3 R.J. 86).

" It is important to distinguish the holder for value and the holder in due course. The latter holds the bill or note exempt from all objections that might be opposed to it in the hands of a previous holder, and he has his recourse against all the parties who are bound by the bill or note. But the holder for value takes the document subject to the same objections that might have been opposed to it in the hands of a previous holder, and subject to all grounds of defence between the original contracting parties." In this case the bank had been notified that the notes in question were given to the payee for patent rights, under false representations, and accordingly it was denied the right to recover.

In the absence of evidence of notice a bank that has discounted a bill will be presumed to be a holder in due course. This follows naturally from Section 30 of the B/E Act, in virtue of which every holder of a bill is *prima facie* deemed to be a holder in due course; and a holder in due course is one who has taken a bill complete and regular on the face of it under the following conditions:—

(*a*) That he became the holder of it before it was overdue and without notice that it had been previously disdishonoured, if such was the fact;

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him

> he had no notice of any defect in the title of the person who negotiated it.

As a holder in due course the bank will hold any bill discounted with it free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill. The personal defences here referred to would include set off, and compensation, but would not include want of capacity — for instance, if the bill were accepted by a minor — want of authority, the defence of forgery, or the like.

The right of a holder in due course would not protect a bank in the case of bills or notes absolutely void, for instance, notes given for gambling debts, which are null and void *ab initio,* even when a bank is an innocent holder for value before maturity. It has been held, however, that a note given for an illegal consideration, namely, to induce a witness not to give evidence on a criminal prosecution may be collected by a *bona fide* holder for value before maturity. (*Dorais* vs. *Chalifoux,* 6 R.L. 325).

A promissory note by a married woman separate as to property in favour of a creditor of her husband is absolutely void, and no action can be maintained thereon by a bank that has discounted the same in good faith before maturity in ignorance of the cause of nullity. (*Ricard & Bk. National,* 3 Q.B. 161).

This decision was given under the original form of Art. 1301, "A wife cannot bind herself either with or for her husband, otherwise than as being common as to property, any such obligation contracted by her in any other quality is void and of no effect." The jurisprudence has decided that this is a matter of public order and must be interpreted strictly and absolutely. The loan and mortgage companies have learned in the hard school of experience to what dangers this article exposes them. As a result of a campaign carried on by them after the final decision in the Kerouac case, in which it was held that a mortgage granted by a wife for monies advanced to her and by her handed to her husband, was void, an amendment was passed a year ago adding to the Article —" Saving the rights of creditors who contract in good faith." It may well be asked what rights creditors, even in good faith, have in a contract that is void and of no effect; and, until some further jurisprudence decides how far the amendment will protect innocent third parties it would be well for the banks to treat a wife's note with infinitely less respect and consideration than they would show to the wife herself.

Of course, if it can be shown that the banker had notice of any irregularity or defect in the bill, his claim to the rights of a holder in due course would be defeated. But mere carelessness on his part in discounting the bill is not sufficient to exclude his right to payment. He is entitled to discount a bill on the credit of the acceptor without having any knowledge of the person holding it; and, providing the transaction is honest, he can recover upon the bill. But negligence or carelessness, when considered in connection with the surrounding circumstances may be evidence of bad faith. For instance, when traders in the country in fraud of their creditors accepted bills for £1,727, drawn on them by the London agent, who sold the bills for £200, it was held that, under the circumstances, the purchaser of the bills must be taken to have had notice that the bills were fraudulent on the creditors and should be allowed to rank against the insolvents' estate only for the sum paid the agent. (*Raphael* vs. *Bank of England,* 25 L.J., C.R. 33).

Where a money changer changed a bank note which had been stolen, and the jury found that he gave full value for it, and took it *bona fide,* not having knowledge at the time that it had been stolen, but that he had the means of knowledge if he had taken care of certain notices delivered to him.—*Held,* that he was entitled to recover.

While discounted bills are current the bank has no lien on the customer's cash balance, and ought not to dishonour his cheques during that time, if the account is in funds. And where a customer gave a bank a bill of exchange to discount, it was held that it had no right to keep the bill and apply the proceeds on his former indebtedness without his consent.

The bank's right may be greatly limited by agreement with the customer. For instance, a bank agreed with an endorser, who was surety for a contractor, that all moneys earned should apply on the discounted paper, and having, without his consent, applied the monies otherwise, the surety was held to be discharged. (22 S.C., p. 404).

And where bankers discounted for the drawer a bill accepted for his accommodation, and on being informed, after it was dishonoured, of the character of the bill, consented to look to the drawer and not to the acceptor for payment; and afterwards the drawers' account with them was in his favour by a larger sum than the amount of the bill, it was held that they were bound to have applied the balance in payment of the bill, and that the bill, as against the acceptor, must be considered as satisfied, although the drawer had become insolvent and was much indebted to the bank for subsequent advances. (Hart, p. 594).

Liability of the Customer.

We have already seen that the transferror of a bill by delivery is not liable on the instrument. Accordingly, if a holder discounts with a bank a bill which is negotiable by delivery, without endorsing it, he is not liable to the banker if it is dishonoured, provided the bill is what it purports to be, and he had a right to transfer it, and was not at the time aware of any fact which rendered the bill valueless.

If, however, there be an antecedent debt and a bill is taken without an endorsement, and the bill turns out to be bad, the demand for the antecedent debt may be resorted to. It has been held that when there is no antecedent debt and A carries a bill to B to be discounted, and B does not take A's name upon the bill, if it is dishonoured, there is no demand; for there was no relation between the parties except that transaction, and the circumstances of not taking the name upon the bill is evidence of a purchase of the bill.

A forged bill is not what it purports to be, is a sham, a worthless piece of paper, therefore the bank that has discounted it, without the transferrer's endorsement, will be able to recover the amount which he has paid to him.

This follows from the provisions of Sec. 24 of the B/E Act, which declares that there is no right to retain or to enforce payment of a forged bill. But if a forged bill is paid in good faith and in the ordinary course of business, by or on behalf of the drawer or acceptor, the person who has paid may recover the amount paid from the person to whom it was paid, or from any endorser subsequent to the forgery, provided notice of such forgery be given.

It will be noticed that the position of a customer who discounts a forged bill, differs from that of one whose signature has been forged upon a cheque. The bank's only chance of being able to charge a customer with the amount of such cheque is when the conduct of the customer establishes an estoppel or amounts to adoption of the cheque.

The principle is a sound one, that where a customer's neglect of due precaution has caused his bankers to make a payment on a forged order, he shall not set up against them the invalidity of a document which he has induced them to act on as genuine.

In the case of discounting, the bank has given value to the customer, and should be allowed to recover what it has paid; but in the case of a forged cheque, that has not been adopted, the customer has not received any consideration and should not be charged with a loss, that more care on the bank's part might have averted.

The principle of adoption or estoppel may apply equally to a third party, one not the bank's customer, and one who had no interest in the discounting of the bill.

E. & Co., merchants at Montreal, received from the Dominion Bank, Toronto, notice in the usual form that their note in favour of the Thomas Phosphate Co., for $2,000, would fall due on a date named, and asking them to provide for it. The name of E. & Co. had been forged to the note which the bank had discounted. Two days after the notice was mailed at Toronto the proceeds of the note had been drawn out of the bank by the payees.

Held: Affirming the judgment of the Court of Appeal (7 Ont. L.R. 90), Sedgwick and Nesbitt, J.J., dissenting, that on receipt of said notice E. & Co. were under a legal duty to inform the bank, by telegraph or telephone, that they had not made the note and, not doing so, they were afterwards estopped from denying their signature thereto.

There is a second form of forgery that must immediately suggest itself to your minds, that of the fraudulent raising of the amount of the bill. Such forgeries are provided for by Sec. 63 of the Bills of Exchange Act, in virtue of which any material alteration voids the bill, except as against a party who has himself made authorized or assented to the alteration and subsequent endorsers. Subsequent endorsers are included because they are estopped from denying the prior signatures and that it is a valid bill.

The principle of estoppel and adoption would, I think, undoubtedly apply to such cases also. For instance, in the case first quoted, had Ewing & Co. made a note for $200 and received notice from the bank of the discount of their note for $2,000 without at once repudiating it, their position towards the bank would be much the same as it was in this case.

With regard to cheques this is held to be the case on the ground of the duty owed by the customer to his bank. That duty is, says Paget, in issuing cheques, not to leave blank spaces or afford obvious facilities for alteration. If, through neglect of this duty, an evil-disposed person is enabled to raise the amount of the cheque in such a manner as not to excite suspicion, and the bank innnocently pays the higher amount, he will be entitled to debit his customer therewith.

In the well known case of the *Imperial Bank* vs. *The Bank of Hamilton,* there was, of course, no adoption on the part of the acceptor, the Bank of Hamilton, and it had done nothing that would estop it from recovering the amount paid by mistake. The facts were, you remember, as follows: One B drew a cheque for five dollars on the Bank of Hamilton, leaving a considerable space after the word "five." He got it marked by the Bank of Hamilton and then wrote in the word "hundred" after the "five." He took the altered cheque to the Imperial Bank, opened an account with it, and forthwith drew out the amount by cheque. The Bank of Hamilton paid the altered cheque to the Imperial Bank through the clearing house, but, discovering the fraud the next morning, immediately gave notice to the Imperial, demanding repayment of $495.00.

The Privy Council held that the money was recoverable.

LECTURES ON THE BANK ACT.

No. 4.

LOANS ON COLLATERAL SECURITY.

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A. Rives-Hall.

The Act provides that in addition to discounting, a bank may lend money and make advances upon the security of, and may take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, etc.

There is this difference to be noted between discounting and taking as collateral security: — The former, as we have already pointed out is a selling, and the instrument discounted becomes the property of the bank. The latter is rather a pledging or hypothecating of the instrument, which remains the property of the customer, but is subject to the lien of the bank for the amount of the advances or loan, with interest and other accessory charges. If such an instrument should be lost or destroyed, without negligence, the loss, if any, would fall upon the customer and not on the bank.

The Borrower.

It is first of all essential that before making any such advances, the bank should assure itself of the capacity and authority of the borrower, for unless he be capable of contracting and have authority to enter into this particular contract of borrowing, the deposit of collateral securities will not be sufficient to protect the bank against loss. Hart lays down the following general propositions:—

1. The banker can require repayment of a loan by a person who, being competent to contract, requested, or by his conduct induced the banker to give credit to him in the matter.

2. The banker can require repayment of a loan by a corporation where the latter had power to borrow to its extent, and the loan was made upon the request of persons empowered to bind the corporation in that behalf.

The individuals of whom the bank should be particularly wary, are married women, minors, persons of unsound mind, and intoxicated persons.

In this Province, as you know, women separate as to property, must be authorized by their husbands in order to effect a valid contract; and, as we have pointed out already, there must be some clear and convincing proof that the loan is for her own purposes and not for her husband. The presence of the husband's signature on the face of the note, as witness to the signature of his wife the maker, has been held to be sufficient evidence of his authorization.

. In England, and I presume in those Provinces that follow the English law, a married woman who borrows money makes a valid contract to repay it, whether or not she has separate property at the time.

But this law approximates very much to our law in that on the grounds of public policy a contract made by a wife, or even a daughter, for the benefit of the husband and father, is void whenever it can be shown that it was made without independent advice, or under the influence of their relations. This rule was reasserted in Ontario in a recent case of the *Bank of Montreal* vs. *Scott* (6 O.W.R. 411).

The action was brought by the Bank against the defendant as the indorser of a promissory note. Scott Bros. & Co. being indebted to the Bank, were requested to give security for this indebtedness, and the defendant's husband, a partner in Scott Bros. & Co., at the request of the Bank's manager, procured the defendant's indorsement upon the note in question. This was a note for $8,000, made by Scott Bros. & Co., in favour of the defendant, and given to the Bank as collateral security for the indebtedness mentioned. There was no evidence adduced to rebut the presumption that the defendant was living with her husband under such circumstances as to entitle her to independent advice, and no evidence that she had such advice. It was practically admitted that she had not such advice, and it appears that she was not a woman with much knowledge of business.—Britton, J., dismissed the action, holding that the case was completely covered by *Adams* vs. *Cox* (35 S.C.R. 393). That the plaintiffs had full knowledge at the time of the taking of the note that it was obtained from the defendant by her husband without consideration and for the accommodation of the firm, and for the benefit of the plaintiffs, and that the plaintiffs were in no better position to recover than the husband could be upon a contract made with his wife in reference to her separate property.

The contracts of infants are absolutely void, while those of persons of unsound mind or of intoxicated persons are only voidable, that is, it must be shown that their incapacity existed at the time the contract was made, and that to the knowledge of the party contracting with them.

Having satisfied itself on the capacity of the borrower, the bank must next determine whose credit is in fact pledged.

For instance, where the bank has given credit to an individual at the request of a person whom the bank believes to be his duly authorized agent, the question will be whether the former had in fact authorized the latter, or, if not, whether he had by his conduct induced the belief on the part of the bank that he had. An agent cannot bind his principal by borrowing moneys, without either an express or implied previous authority, or an authority to be inferred from the subsequent recognition by the principal of his conduct. If the principal entrusts collateral securities to the agent, there is a strong presumption that he has the necessary authority to borrow money on them, and the principal may accordingly be held liable.

If, however, the bank knows that the agent is exceeding the scope of his authority, the principal will not be liable.

The knowledge that would defeat the bank's right to recover, depends largely on the circumstances of the case; and, as an example, though not strictly in point, in the sense of borrowing money, we may cite a recent case, where the secretary of a company endorsed a crossed cheque, and deposited it in his own account. It was held that the bank failed in its statutory duty to the real owner and was liable. But when the manager of another company drew cheques, and by this means transferred the company's money to his own overdrawn account, it was said that the bank having no knowledge that the company was not, or might not have been indebted to the manager, it was not bound to enquire into the state of their account, and was not affected with notice of any irregularity on the part of the manager.

The agent may have a restricted authority, but if being entrusted with securities, and instructed to raise a certain sum on them, he borrows a larger sum upon the securities and fraudulently appropriates the difference (the bank, of course, acting in good faith, and in ignorance of the limited authority), the principal cannot redeem the securities without paying the bank all it has lent.

As you doubtless know, partners in a trading firm are the agents one of another and have an implied authority to bind a firm by borrowing money for the purposes of its business. But if the money be lent to a partner who says he is borrowing it for the firm and he misapplies it, and there is proof that the bank was negligent and the transaction was out of the ordinary course of business, it cannot recover against the other partners.

The unexplained fact that a partnership security has been received from one of the partners in discharge of a separate claim against himself is a badge of fraud, or of such palpable negligence as amounts to fraud, which it is incumbent on the party who so took the security to remove by showing either that the partner from whom he received it acted under the authority of the rest, or at least that he had reason to believe so.

Corporations.

Hart, p. 618.—"Where the banker relies upon the credit of a corporation, the following questions arise: Had the corporation capacity to bind itself by contracting to repay the loan? Had the individuals upon whose request the banker lent, power, under the constitution of the corporation, to bind it by borrowing, or were they, in fact, acting at the time as, and reasonably believed by the banker to be, directors, or officers duly qualified and appointed, and who, if so qualified and appointed would have had power under its constitution to bind the corporation by borrowing? or, if not, have the acts of the persons who borrowed been effectually ratified?

A corporation created by charter can bind itself by its common seal to repay a loan even though no power of borrowing is contained in its charter.

A corporation formed by special Act of Parliament, or under the provisions of a general act, can bind itself to repay a loan if it has either an express or implied power to borrow. It will have an implied power, if it is formed to carry on an undertaking requiring the expenditure of money and no means are expressly provided for supplying it with funds for the purpose, but not otherwise. In order to ascertain its powers, reference must be made to the statute, the memorandum of association, the rules of other governing provisions of the corporation, as the case may be."

We have digressed at some length from the consideration of loans upon collateral security to discuss the very important question of the borrowers' capacity and authority — let us now return to the discussion of the loan itself and the security offered:

Loans on Bills and Notes.

Section 64 of the Act divides loans or advances into three classes:

1. On Bills and Notes.
2. On other negotiable securities.
3. Stocks, Bonds, Debentures, etc.

In our last lecture discussing the effect of discounting, we noticed that the banker who has discounted a note, as well as being a holder in due course, is the actual owner of the bill, and assumes all the risks of ownership, but when the bill is taken as collateral security, as a pledge, though he is holder for value, and is presumed to be a holder in due course, he is not the owner and does not assume the risks of ownership, accordingly if the bill be lost or destroyed, without negligence on his part, he is not responsible, and the loss must be borne by the pledgor.

As the pledgee the bank must exercise ordinary care of the documents pledged so long as his right or detention continues, and after repayment of the loan, or tender thereof, they are at his risk until returned to the pledgor.

With regard to bills and notes or cheques, however, the distinction between discount and pledge is otherwise immaterial, for pledging is a negotiation of the instrument, and the bank becomes a holder within the meaning of the Bills of Exchange Act, and can exercise all the rights of a holder, one of which is that it may sue upon it in its own name.

It cannot, however, negotiate the instrument, and it is bound to present it at maturity and give notice of dishonour if it is not paid. This directly follows from the general duty of the pledgee to use due care and diligence.

In *Peacock* vs. *Russell* (32 L.J., C.P. 266), it was held that if a creditor takes a bill of exchange from his debtor as collateral security for the payment of his debt, and retains it until it becomes due, his duty is to present the bill for payment, and if the bill be dishonoured, to give notice of dishonour in the same way as if he were absolute owner of the bill. If he omits to do this, and the bill consequently becomes worthless, he cannot after sue his debtor either on the bill or on the original consideration.

"It seems," says Byles, J., "that the plaintiffs were at liberty to sue for the debt, in respect of which the bill was given as a security, at any time before the maturity of the bill. But they had all the rights of the holder of a bill of exchange, and were entitled to claim payment of the bill from the parties liable on it; and, having all the rights, they are also liable to the duties of holder — one of which is to give due notice of dishonour."

Having performed all the duties then of holder, with due care and diligence in the event of non-payment of the collateral, the bank may have recourse to the original debt, for, a bill or note deposited as security or pledged to cover an advance or overdraft does not, as does a bill or note given for a debt, suspend the remedy for the debt. The two run side by side, are in the true sense collateral. There is nothing in law to prevent a bank suing for an overdraft even during the currency of a note or bill at a fixed date which it has taken as security.

It can, of course, sue upon the collateral also when it becomes due, even before the maturity of the debt for the security of which it was given.

In a case of *Ward* vs. *The Quebec Bank,* the maker of a note sought to deprive it of negotiability by omitting the words "or order," and the words "or bearer," with the object of pleading compensation by another debt, against the payee at maturity. The payee, however, delivered the note to the bank as collateral for an advance of a similar amount. The note was, of course, negotiable under the Bills of Exchange Act, and the bank became a holder in due course to the extent of the advance, and it was held that it was entitled to recover the amount of the note from the makers.

The sum secured by the collateral being less than the amount of the note, the pledgee as regards the surplus sues as trustee for the pledgor, and can recover if the latter could do so.

The bank must be careful to see that the debt secured by the collateral is paid at the earliest possible time, for it has been held that when a bank took a note endorsed by its customer as collateral security for past advances amounting to $10,000, and after the maturity of this note deposits amounting to $100,000 were passed to his credit in the books of the bank, without payment of the advance, the collateral was discharged, the bank had no claim on the maker or the customer who endorsed it.

A common form of security as cover — is a promissory note payable on demand, that being a continuing security. But if such a note be endorsed, it must be presented within a reasonable time after endorsement to charge the endorser. In estimating such reasonable time, the character of the instrument as a continuing security must be taken into account; but that would not justify its being held over for any period during which the loan might be outstanding. In a case of the *Chartered Mercantile Bank* vs. *Dickson* (L.R. 3, C.P. 574), it was held that where a demand note was endorsed February 16th, but the payment of which was not contemplated at any immediate or specific date, but was intended as a continuing security, the endorser was not discharged by the fact that it was not presented to the payee until December 14th — and in the *Merchants Bank* vs. *Whitfield* (2 Dorion, 151), where the directors of a joint stock company endorsed a note of the company which was given to the bank as a continuing security, and it was held for twenty-seven months before payment was demanded, it was held that the endorsers were not discharged. It would, however, be doubtful wisdom on the part of the bank to allow so long a delay in ordinary cases.

The expression "collateral security" is sometimes used in the sense of a secondary, at other times, in the sense of a primary security. We have so far dealt with bills and notes deposited with the bank as a primary security, but it often happens that the bank also holds liable some person who may occupy the position of a surety, in which case care should be exercised in dealing with the securities if the surety is to be held liable.

Our Code provides that the suretyship is at an end, when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor, for if the surety be called upon to pay and does pay the debt he has a right to be subrogated in all the rights which the creditor has against the debtor.

The law of Ontario is to the same effect. "Every person who being a surety for the debt of another . . . . pays the debt . . . . shall be entitled to have assigned to him — every judgment, specialty or other security which is held by the creditor."

The bank must also use diligence in getting paid its advance, at least when there has been any such understanding between it and the surety. In the case of the *Banque du Peuple* vs. *Pacaud* (2 Q.B. 424), the bank discounted a note and received collateral security from a third party on condition that it would use diligence in collecting the note. It renewed the note, and released one of the endorsers for a consideration. The depositor of the collateral sued for and recovered it.

(2). *Loans on Other Negotiable Securities.*

The expression "negotiable securities," or "negotiable instruments," is used in two senses. It is frequently used to describe any written security which may be transferred by endorsement and delivery, or by delivery alone, so as to vest in the holder the legal title, and thus enable him to sue upon it in his own name. In a narrower and more technical sense it applies only to those instruments which, like bills of exchange, by endorsement or delivery before maturity, vest in the *bona fide* holder for value not only the rights of the transferrer, but the right to claim the full amount for which the instrument is drawn.

The expression would seem to have been used in this section in the latter sense, as there is added a further and special power to deal in and lend money upon the security "of the stock, bonds, debentures, etc., of corporations," some of which would come within the usual meaning of negotiable securities. All of these when in their usual form, except stock when used to designate capital or shares, would be negotiable instruments in the wider sense; while some of them may come within that designation in the narrower or more technical sense. In the broader meaning it would include warehouse receipts and bills of lading, which it is evident from subsequent sections were not intended to be included.

The powers conferred by the present section were evidently intended to be confined to money and securities for money.

The tests of negotiability are thus stated by Blackburn, J., in *Crouch* vs. *Credit Foncier* (L.R. 8 Q.B., 373)—

"It may, therefore, be laid down as a safe rule that where an instrument is by the custom of trade transferable, like cash, by delivery, and is also capable of being sued upon by the person holding it *pro tempore,* then it is entitled to the name of a *negotiable instrument,* and the property in it passes to a *bona fide* transferee for value, though the transfer may not have taken place in market overt. But if either of the above requisites be wanting, *i.e.,* if it be either not accustomably transferable, or though accustomably transferable, yet if its nature be such as to render it incapable of being put in suit by the party holding it *pro tempore* it is not a "negotiable instrument," nor will delivery of it pass the property in it to a vendee, however *bona fide,* if the transferor has not a good title to it, and the transfer be made out of market overt."

It is, therefore, the essence of negotiability that an endorser has the right to sue on the instrument in virtue of his own independent title, and this right makes negotiable instruments particularly appropriate for the security of bank advances.

The negotiable instruments that are neither bills or notes, or stocks and bonds are not a numerous class. But we may indicate a few examples:

Bank Deposit Receipts.

The instruments of this class which were considered in the earlier Canadian cases were not payable to order or bearer, and so were held not to be negotiable instruments under the law relating to promissory notes as it then stood, so as to enable the holder by endorsement or delivery to recover in his own name. But now that under the Bills of Exchange Act a promissory note does not require the words "order," or "bearer," if it be intended to restrict its negotiability it should contain the words "not transferable," or words to that effect.

In an Ontario case (*Central Bank,* 17 O.R. 574), the receipt was in the following form:

"Received from the Messrs. Cox & Co. the sum of six thousand dollars, which this Bank will repay to the said Cox & Co., or order, with interest at 4 per cent per annum on receiving fifteen days' notice. No interest will be allowed unless the money remains with the bank six months. This receipt to be given up to the Bank when payment of either principal or interest is required."

Boyd, C., in giving judgment in favour of the holder by endorsement, said: I have a very strong opinion that the deposit receipt as drawn is a negotiable instrument, under which the claimants are entitled to succeed as upon a promissory note made by the bank. Being made payable to "order" it was meant to be transferable by endorsement, and the bank which had issued it in that form was estopped from denying its negotiability.

Paget says (p. 20), that a deposit receipt is not a negotiable instrument, and the transfer thereof confers no right to the deposit account.

But he is speaking of a special form of deposit receipt with a cheque form on the back, which might be filled up by the depositor, either for the whole or part of the money deposited, and he criticizes the legal effect of such documents rather as cheques than as negotiable instruments.

It seems to be clear then that in default of words restricting their transferability, Deposit Receipts are negotiable instruments and may be taken as collateral security for advances.

The practical advantage is not very obvious, however, as a deposit receipt would usually have a lower rate of interest than an advance or overdraft. But if, as in the case above cited, no interest would be allowed unless the receipt were current for at least six months, it might be worth while for the customer to keep it in force by getting an advance until the interest would be payable.

Letters of Credit.

A letter of credit is not a negotiable instrument: In the case of the *Jacques Cartier Bank* vs. *Queen* (25 S.C.R. 84) the Provincial Secretary of Quebec wrote a letter to a government contractor that money would be voted at the ensuing session on his contract, which would be paid to any person to whom he might endorse the letter. He endorsed the letter to the bank for advances on his contract, and the money was voted by the Legislature. It was held by the Supreme Court that this "Letter of Credit" was not a negotiable instrument under the Bills of Exchange Act or the Bank Act, and that the bank could not recover upon it from the government.

Banks dealing with governments or in government securities should carefully examine not only the powers of the persons acting on their behalf, but also the paper offered by them, and if they fail to do so it is at their risk and peril. They have only themselves to blame if ultimately they are without a legal remedy.

Letters of credit, strictly speaking, are mandates giving authority to the person addressed to pay money or furnish goods on the credit of the writer. They are generally made use of for facilitating the supply of money required by one going to a distance or abroad and avoiding the risk and trouble of carrying specie or buying bills to a greater amount than may be required.

The holder may draw the whole or a portion only of the amount represented.

Circular notes, a more modern form of a letter of credit, are given usually in series for small amounts; the holder cannot require less than the amount of a circular note, but he is not bound to cash all or any of the circular notes which he has paid for, unless he thinks proper. But he cannot compel the bank to refund the money paid for the notes unless he be in a position to return the notes. So, when the notes were lost, it was held that as the bank might still be called upon to pay them the plaintiffs were not, without giving a proper indemnity, entitled to recover.

Circular notes are, therefore, held to be negotiable in English law, on the ground, I presume, that they are surrendered by the holder and returned to the drawer as soon as the money is advanced; they are, in fact, negotiated, while letters of credit are only endorsed with the payment.

Post-Office Orders: are not negotiable, although they may be payable on a bank's endorsement with a payee's signature. (*Fine Art Soc.* vs. *Union Bank,* 17 Q.B.D. 705).

The plaintiffs banked with the defendants; it was the duty of the plaintiff's secretary to pay all moneyse received by him on behalf of the plaintiff into the defendants' bank to the credit of the plaintiffs. The secretary, without the knowledge of the plaintiffs, kept an account at the defendants' bank. He paid into the defendants' bank to his own credit certain post-office orders belonging to the plaintiffs, which the defendants subsequently cashed. The post office regulations with regard to P.O. orders provide that, when presented for payment by a banker, they shall be payable without the signature by the payee of the receipt contained in the order, provided the name of the banker presenting the order is written or stamped upon it.

It was held that the bank had no title to retain the proceeds as against the real owners.

It was contended that these P.O. orders were documents transferable to bearer or were in the nature of such documents, and that the bank having taken them in good faith, obtained a title to them independent of the title or want of title in the secretary. The regulation referred to is as follows:—

"Any money order made payable to any person or persons whomsoever at a post office in any city, within the United

Kingdom, may be presented for payment through any banker, notwithstanding that the form of receipt on such money order may not bear any signature purporting to be the signature of the person to whom such money order is payable, provided that the name of the bank be written or stamped upon the face thereof; and the name of such bank shall be accepted at such post office as a sufficient receipt for the amount of such money order."

The true effect of this regulation was merely to substitute the signature of the banker for that of the payee. And there is nothing in the orders to make them negotiable instruments, indeed, it seems clear that they have not been treated as such by the general practice in England.

QUESTIONS ON POINTS OF PRACTICAL INTEREST.

REPLIES may be obtained through this column from the Journal Questions Committee to enquiries of subscribers from time to time on matters of law and banking practice.

The questions received since the last issue of the JOURNAL are appended, together with the answers.

Deposit in name of party "in Trust."—Right to Garnish.

QUESTION 636.—John Smith has an account "John Smith in Trust." The Bank holds no declaration as to the Trust, nor has it any knowledge of the ownership of the funds.

Can a creditor of John Smith attach the amount at the credit of this account?

ANSWER.—The presumption is that it is trust money, and the onus of proving the contrary is on the creditor who is seeking to garnishee it. If the money, as a matter of fact, is John Smith's, it can be garnisheed. If John Smith were irresponsible, the safe course would seem to be for the Bank to pay the money into Court, or failing this, to take interpleader proceedings. (See Maclaren's Banks & Banking, 1901, pages 185-8).

Cheque payable to order.—Right of Drawee Bank to demand Endorsement.

QUESTION 637.—If a cheque is drawn "Pay E. Hall or Order," and is presented to the drawee Bank by E. Hall, who is well known to the Teller, is Hall required to endorse the cheque before receiving payment?

Answer.—We are of the opinion that the Bank is entitled to have the payee's endorsement on the cheque as a receipt for the money. (See Questions 179-181).

Note with two endorsers—not protested—on due date.—Are Endorsers discharged?

Question 638.—A Promissory Note bearing two endorsements is sent for collection to a bank at A in the Province of Ontario where there is no one qualified to protest a dishonoured bill. The note is returned unpaid. No notices of dishonour are sent until the note is received back by the holder, who then notifies the endorsers.

A. Are the endorsers discharged?

B. If they are, has the holder any recourse against the Bank at A?

Answer.—A. Presuming that the note has been duly presented for payment by the Bank at A., in accordance with Sec. 45, Bills of Exchange Act, the endorsers are not discharged if notices of dishonour were mailed to them on the day following the return of the note. See Bills of Exchange Act, Sec. 49 (f.) sub-sec. 2 and 4. Also Question 466.

B. Should the endorsers show that "reasonable diligence" had not been exercised in presenting the note for payment—which is the only ground upon which they would be released—we think the holder would have recourse against the Bank at A.

Deposit in name of Person Account distinguished by Initials of a Company.—Can Power of Attorney be given?

Question 639.—An official of a Company opens a Bank Account in his own name, but for the purpose of distinguishing this account adds the initials of the Company, thus:—"John Jones, P. D. R." The Bank is aware that the money deposited from time to time belongs in reality to the P. D. R. Company, although it is withdrawn by cheques signed "John Jones, P. D. R." Later, Jones wishes to appoint his brother, who is not an official of the Company, as his attorney to deposit and withdraw from this account.

Can the Bank safely act upon the Power of Attorney without the consent of the Company?

ANSWER.—The Bank could safely act on the Power of Attorney. The fact that this account was called "P. D. R." instead of "Special," or "Trust," does not bind the Bank to see to the proper application of the money. If the P. D. R. Company had opened the account in the name of "John Jones, P. D. R.", the case would be different.

Notice to stop payment of cheque by one Executor after an order from Court had Authorized the Payment.

QUESTION 640.—If the Court orders a Bank to pay to certain Executors all moneys in its hands, would notice in writing from one of the Executors to stop payment of a cheque issued subsequent to the order of the Court be binding upon the Bank?

ANSWER.—We are of the opinion that the Bank would be bound to stop payment of the cheque. z

BOOKS ON LEGAL SUBJECTS AND SUBJECTS RELATED TO BANKING

APPROVED BY THE JOURNAL QUESTIONS COMMITTEE.

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JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

Vol. XIV] JANUARY, 1907. [Number 2

CONTENTS

PAGE

EDITORIALS 89

CLEARING HOUSE TABLE 99

FUNCTIONS OF EXCHANGES............................ 100

LECTURES ON THE BANK ACT 123

FIRST PRINCIPLES OF CONTRACT 161

CASH RESERVES AND FINANCIAL SUPREMACY....... 176

THE CURRENCY QUESTION IN THE UNITED STATES AS IT APPEARS TO A CANADIAN 185

MONTREAL:
THE GAZETTE PRINTING COMPANY
1907

The Canadian Bankers' Association.

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VOL. XIV.] [Number 2

JOURNAL
OF THE
CANADIAN BANKERS' ASSOCIATION

JANUARY, 1907

EDITORIAL NOTES

1906

One of the most prosperous years for Canadian banking institutions has just closed. Reserve funds have been much augmented, dividends have in several cases been increased, the volume of deposits and of all resources has largely expanded, and banking facilities have been extended to the most remote corners of the Dominion.

The Man at the Tiller.

The recent terrible train wreck upon the Burlington & Ohio Railway has been made the occasion for numerous suggestions for improving the system of protection against accidents. One paper very wisely remarks that no matter how perfect mechanically the block or any other system may be, the safety of a train and its passengers must always depend upon the man in charge, and that if he fails in his duty in the engine cab or the signal box death and disaster will surely follow.

This may also be truthfully said of bank failures. The banking system of a country may be admirable, but the safety of bank shareholders and depositors must always be largely dependent upon the man at the tiller.

Contents.

In this number of the *Journal* will be found the first of a short series of articles on "The First Principles of Contract," by Professor R. E. Macnaghten; a paper on the "Functions of Exchanges," by Professor Flux, a subject of much interest to bankers; an article about "Cash Reserves," by H. M. P. Eckardt; the continuation of Mr. Rives Hall's lectures on the Bank Act; and the address supposed to have been delivered at the annual meeting of the American Bankers' Association by the editor of this *Journal*—published by special request of some Western subscribers.

Corporations and the Public.

There seem to be signs of the development of a public sentiment adverse to certain classes of corporations engaged in rendering important public services. As an example we have the movement in Ontario looking towards municipal control of electric power distribution and the controversy over the gas and electricity situation in Montreal. The sober observer may indulge in some sympathy with both sides in a question of this nature. Mismanagement by public representative bodies of important undertakings committed to their charge is no rare experience. Yet submission to extreme exactions by corporations enjoying public privileges cannot be expected to continue indefinitely. So long as an enterprise involves great risks and calls for the unusual capacities of pioneers in new industrial fields, its controllers may secure large profits, when successful, without arousing an excessive degree of envy. When the greatest of the difficulties have been overcome, and the methods of procedure are, in great part, no longer matters of risky experiment, the public grows restive unless corresponding concessions be made by the great corporations privileged to enjoy public franchises. The rage for public operation of light and power plants, of street-car services, and the like, may well be unwise, but much of its strength is due less to the conviction that municipal enterprise is efficient than to the belief that corporations have been and are unduly grasping.

The Rise in Silver

For the greater part of a generation, the price of silver has been on the downgrade. Not the least important of the influences affecting its continued fall in price was its exclusion from its former important place in the monetary circulation of one country after another. The ink is hardly dry on the proclamations giving effect to the most recent of the legislative acts establishing gold as the standard of value, when serious disturbance is threatened through a marked rise in silver prices. In 1906 silver has been worth 25 per cent. more than in 1902, and not since ten years ago has so high an average level been reached as in the year just ended. Those countries which had rearranged their currencies on a basis giving the old silver dollar a value of only fifty cents gold are in the position that the silver coins have reached a value as bullion as great or even greater than they have as currency. The government of the Straits Settlements has diminished the silver contents of its silver coins in order to prevent their withdrawal from circulation. Should the high value of silver be maintained, similar difficulty is likely to be experienced in some other countries, among which the Phillipines and Mexico may be named in view of the very recent changes which have been effected in their currency arrangements. The rise thus far has afforded Mexico an opportunity to dispose of large stocks of silver to advantage; the maintenance of the current level of silver prices, or a further rise, may produce embarrassment.

A Soap Bubble

Soap is a strange subject on which to arouse the indignation of the British public. Yet it has served the purpose most effectively. For weeks serious and humorous journals alike have been witness to the great interest which the attempt to float a Soap Trust had excited. The increasing cost of important materials of manufacture suggested economy in marketing, as a means to which a combination of the chief interests was proposed. Among other features of importance to soap users, the subsequent events brought out these two: some of the soaps sold differ rather in name and price than in quality or cost: and union among manufacturers to achieve economy sought its ends by deducting an ounce from each pound of soap sold. Moreover, it appeared that the profits of soap-making were not by any means so meagre as to call for an immediate sacrifice on the part of the devotees of cleanliness. The attempted combination did not endure very long, and for the present the soap trade in England will continue to be conducted on competitive lines.

A Suggested Remedy.

The high rates for call money which have been experienced in New York recently have led to much discussion of causes, and sundry proposals looking to a remedy. The interior banks which keep substantial sums on deposit with New York banking institutions have sought to take advantage of the favourable rates for money by putting out these balances on call. The consequent strain on the resources of the metropolitan institutions has produced a proposal that Clearing House bankers should accept deposits from interior banks only on condition that they shall not be called upon to lend the balances at rates above the legal 6 per cent. The establishment of such a practice would clearly give the New York banks a more effective control over their funds in periods of money strain. But to have this result, it would be necessary that the interior banks should submit quietly to leave to their metropolitan agents the profits of loaning at extra high rates. It may be doubted whether they would find it necessary to submit to such terms unreservedly. Should a large part of their deposits be transferred to Trust Companies, they might secure something like the existing facilities for taking advantage of spasms of tight money. And the problem of effective control by the Clearing House of the banking operations of the Trust Companies is not yet solved.

Nearer to a Solution.

It would almost appear that agreement on the essential features of a plan for infusing greater elasticity into the note issues of United States National Banks had been reached. The Committees of the American Bankers' Association and of the New York Chamber of Commerce have both recommended the adoption of an emergency issue, not secured by bonds, and restrained by a special tax. In a conference between members of the two committees a compromise plan was drafted to apply to banks which have been in operation for a year at least, and have a surplus of not less than 20 per cent. of their capital. Such banks, it is proposed, shall have power to add to their bond-secured issue a further issue, secured on general assets, to the amount of 40 per cent. of their bond-secured issue. On these notes a tax of 2½ per cent. per annum is proposed. Beyond this limit a further issue not exceeding 12½ per cent. of the capital, and subject to a tax of 5 per cent. per annum is suggested. Banks using these powers would be required to maintain cash reserves against the special issues equal to those required against deposits, and other provisions looking to adequate security for the effective convertibility of the notes are made. That such a plan would give a desirable element of elasticity to the National Bank currency cannot be doubted: that it is reasonably well safeguarded against abuse may also be admitted, provided the method of redemption is made satisfactory. It is true that taxed notes would not be kept in use willingly when they failed to earn enough to pay the tax and the other expenses of circulation. A high rate of taxation would make the device of little benefit to the farmer, while a low rate would fail to deter the banks from taking advantage of the proposed powers for emergencies of a not very serious character. There are those who urge that the trouble under the present system is that stock-market speculation absorbs the funds which the farmers need for moving their crops in the fall. Do the new proposals contain adequate safeguards that the benefits they offer shall accrue to agriculture and commerce rather than to high finance? Is the real difficulty, in fact, one connected with the system or with the men who control it, and if the latter, would the proposed plans attain the desired end?

The Problem of Cash Reserves

The position of the bullion reserve of the Bank of England continues to be the subject of anxious discussion among bankers and others in the Mother Country. In spite of the very large additions made to the world's gold supplies in recent years, the metallic backing of the huge credit operations of British banks has remained practically unaffected. How to secure an increase of gold holdings is by no means an easy problem. The habit of reliance on the central reserve, held by the Bank of England, is firmly established. It is clear that, if more gold is to be accumulated, someone must bear the cost, and the difficult point is to induce bankers generally to face the burden, and to devise a plan by which this burden may be distributed among those whose operations are rendered secure by the existence and availability of the central gold reserve. There are no delusions in the minds of English financiers on the subject of the connection between credit and cash. Everyone is well aware that credit cannot replace hard cash, as seems to be imagined by some amateur financiers on this continent. The careful attention which is, fortunately, now being given to the problem of cash reserves in England, should lead to a more satisfactory situation. It is a good sign that the matter is being ventilated, and that not merely on rare occasions, but persistently, and that men acknowledged as leaders in finance are giving it attention.

Compensation to Workmen.

There is something remarkable in the spread of the movement for providing adequately for compensation to workmen injured in the course of their employment. It has affected practically every country in Western Europe, and the discussion of the new measure in the British parliament curiously reflects the trend of opinion. The English Act of 1897, when compared with those which have been adopted in other European countries, has, undoubtedly, some serious weaknesses. The new Act endeavours to provide with more care that there should be given some security that workmen should not be deprived of the indemnities to which they become legally entitled through insolvency on the part of their employers. An obvious difficulty is presented for solution in the case of diseases recognized as specially caused by the conditions of industrial employment. Some of these are now assimilated to accidents so far as relates to relief to sufferers. The desirability of a general system of sickness insurance seems to be on the way towards recognition. Ten years of experience have not yielded such results as to frighten the public or even employers, though, in extending the scope of the Act to include even domestic servants, Parliament seems to be moving faster in some directions than in others. One may question whether it is entirely the most essential points which are being handled.

A Graduated Income Tax.

The report of the British Income Tax Committee must be something of a disappointment to the advocates of a graduated Income Tax. The Committee deliberately declines to discuss the theoretical grounds on which graduation has been advocated, and puts with a good deal of force the practical difficulties of administering such a tax. In fact, evasion seems likely to introduce at least as much unfairness of incidence into a graduated income tax as may result from a uniform tax efficiently collected. The principle of degression applied at present to incomes under £700 a year, does give the same results as a graduated rate, within the range of incomes affected. The extension of the system of abatements is suggested, while the practicability of a special extra tax on incomes in excess of (say) £5,000 is also discussed as a second substitute for regular and systematic graduation, and presenting much smaller difficulties in its administration. It is, further, urged with much force, that the taxation of inheritances does in practice operate in much the same way as an income tax, and, as these taxes are now graduated, they have the effect of a deferred income tax on a graduated scale. Some proposals are included in the report for a differential treatment of incomes which are the result of personal exertion and those derived from property. On this point the suggestions seem to be open to more criticism than the remainder of the report, which is, on the whole, more conservative than many had expected.

The Kindness of Secretary Shaw.

In order to facilitate the importation of gold by United States bankers, during the tight money period in September and October, Secretary Shaw advanced to importers, on bond security, gold equivalent to that actually secured for shipment. The advances were repaid when the gold was received and the practical effect was to place the gold at once at the disposal of importers, and to relieve them of interest charges while the amount engaged in Europe was in transit. The payment of interest on gold in transit is a common device of the Banks of France and of Germany to encourage gold imports. In those cases, however, the banks, whose operations required the gold to be secured, themselves paid the expense of getting it. Secretary Shaw has allowed the banks to create a situation requiring prompt imports of gold, and has relieved them of a part of the expense of relieving the situation. Within the six weeks during which the special facilities were continued, about $42,000,000 was taken for import. Allowing interest at 6 per cent. for ten days on gold in transit, the importers were relieved of expense in securing gold to the extent of about $70,000. Are New York bankers really in need of a dole of such relatively insignificant amount to assist them in meeting the financial requirements of the business community, that is to say, of their customers? As seen through Canadian spectacles, the kindness of Secretary Shaw to the bankers seems Quixotic.

The means of Critical Comparisons

The drastic legislative changes which followed the Insurance investigation in New York State, and the anticipation of new legislation to follow the Canadian inquiry present a remarkable contrast to the result of the inquiry by a select committee of the House of Lords. In its report, issued within the last few months, this committee proposes no serious changes in the existing British legislation touching life insurance. The reliance on publicity to secure efficiency and economy combined with stability is not shaken by recent disclosures in other countries. Such changes as are proposed aim at making the information afforded by the companies to their policy-holders more complete and satisfactory. Experience has justified the reliance of the Briton on publicity in such matters, and one is compelled to ask why publicity will not produce results as satisfactory in America as in England. There is an old proverb that you may lead a horse to water, but you cannot make him drink. So you may afford the public the means of critical comparison between rival business institutions, but you cannot compel their effective use. Publicity does act as a real restraint on various evils in England, because many people are willing to take some trouble to use the material made public for the protection of investors. The continued efficiency of publicity there cannot be guaranteed if this habit be lost nor can its efficiency be relied upon where the habit is non-existent.

The Mercantile Credit System

A recent issue of "The Bulletin" of the American Institute of Bank clerks, in commenting on changes in business procedure, notes that the custom of granting long credits by commercial houses is giving way in some lines of business. Instead of seeking credit from a wholesale house, a buyer turns to his local bank for assistance. "The Bulletin" suggests that in course of time, "the granting of mercantile credit will be recognized as altogether a banking function." One feature seems to have escaped the attention of the writer quoted, and it is one of no small importance. The wholesale houses, in giving credit, are in turn forced to seek credit from their bankers. Their clients thus borrow, not from the local banks, but from the banks in the large cities where the wholesale houses conduct their business, and these houses function as agents in securing a loan for the benefit of their clients. The elimination of such intermediaries suggests itself as likely to be, on the whole, advantageous. Why should the interior banks in the States, for example, send their surplus funds to the great mercantile centres, to be loaned, in effect, to their own customers, through the credit custom referred to? May not some of the difficulties experienced by reserve cities through having the custody of the surplus funds of interior bankers be susceptible of alleviation through the growth of the practice commented on by "The Bulletin?"

In Memoriam.

Of the late Mr. Andrew Thomson, who for twenty-seven years served the Union Bank of Canada as its president, the Quebec *Chronicle* says: "A gentleman in the highest and best sense of the word, courteous to his equals, considerate to his inferiors, and with a ready ear and a sympathetic heart for those in distress, he consistently adhered to the principle of keeping the one hand ignorant of what the other was doing; his full worth was known only to the Father who seeth in secret and who rewarded him openly in the universal love and respect in which he was held by a whole community. His loss is a public one, and there will be many sore hearts in the city to-day amongst those have looked up to him as an example, who have been assisted by his wise counsel and advice, or have been benefitted by his large but unostentatious charity."

Upright and honourable in all his dealings, and possessing the confidence and affection of every one who knew him, Mr. Andrew Thomson's name is deservedly held in loving reverence by the people of Quebec and his many friends outside of the historic city.

TABLE OF CLEARINGS.

Comparative Totals of Bank Clearings for the past five years at the cities of Montreal, Toronto, Winnipeg, Halifax, Hamilton, St. John, Vancouver, Victoria, Quebec, Ottawa, and London.

	1906	1905	1904	1903	1902
Montreal.....	$1,533,597	$1,324,314	$1,065,067	$1,113,978	$1,098,970
Toronto.	1,219,125	1,047,491	842,097	808,748	809,078
Winnipeg	504,585	369,868	294,601	246,108	188,370
Halifax	91,837	89,252	90,116	93,350	88,532
Hamilton.....	78,480	68,386	59,003	53,420	45,965
St. John......	60,042	52,836	51,423	49,013	42,424
Vancouver....	132,606	88,460	74,030	66,216	54,468
Victoria.......	45,615	36,890	33,070	30,818	28,570
Quebec........	91,618	85,795	79,844	88,329	73,247
Ottawa........	135,327	120,892	106,638	106,084	95,469
London.......	57,863	50,430	45,552	42,831	*23,098

* Part of year. (000 omitted).

THE FUNCTIONS OF EXCHANGES.

SEEKING for a mode of distinguishing between different stages in the progress of the world, some thinkers have selected the organisation of trading operations as the basis of a systematic classification. It may with truth be said that modern trading methods differ from those of former ages as conspicuously as modern methods of manufacture differ from the ancient craftsman's procedure. The vast scale of modern trading has introduced new and difficult problems, and to meet the difficulties of the situation new forms of procedure have been devised, and new organisations contrived. Perhaps it might be more strictly in accordance with the facts if we were to say that the older and simpler organisations have been modified and elaborated and specialised to meet the new creditors of world-wide trade in articles of common consumption, and in important raw articles of industry, as well as in the products of special climes and luxuries for the wealthy. The methods of marketing which sufficed for the needs of a simpler and less extensive commerce are found inadequate for handling the vast harvests of to-day on grain and cotton and other staples. To provide for the changed conditions, elaborately organised exchanges have grown up.

A characteristic difference between the ordinary market and these organized exchanges is that, in the case of the former, the commodities which are the subjects of exchange are brought to the market, and can be handled and examined there. The subjects of the dealings on modern highly organized exchanges are, on the other hand, not considered individually, but as members of certain well-defined classes of objects. It is not certain particular bushels of wheat or certificates of stock that are bought and sold, but a certain number of bushels, or of certificates, which belong to specified classes, and which are bought or sold as such rather than in respect of individual peculiarities. It follows from this that these operations of an exchange cannot extend to all kinds of commodities, while, on the other hand, dealings may be effected in commodities which are not actually present, and may, in fact, be far distant, may even be non-existent at the time, and becoming the subjects of trade as the anticipated product of industrial or agricultural operations in progress, or to be undertaken. Thus a very high degree of concentration of dealings is made possible, business activity becomes intensified, and the great exchanges are of international scope and importance.

The general name "Exchange" may be applied to such organizations, though other designations are commonly employed, such as "Board of Trade." The word *Bourse,* with its modifications in different languages, serves as a general designation of the organizations in question in the leading commercial languages other than English. The term *Exchange* or Bourse may be used to indicate the market organizaztion itself, or the aggregate of the persons taking part in dealings, the place or building where the regular meetings take place for the purpose of conducting the business of the market, the hours during which business is conducted, and so on.

There may be distinguished, for convenience, three classes of exchanges.

(*a*) Exchanges for dealings in Money and Securities, to which class belong the Royal Exchange, and the Stock Exchange of London, the Stock Exchanges of New York, Chicago and Montreal, the Paris Bourse, the Stock Exchange (Effektenbörse) of Frankfort, etc., etc.

(*b*) Produce Exchanges, conducting operations in the various kinds of grain, Wheat, Maize (corn), Barley, Oats, Rye; in hay, straw, meal, malt, potatoes, hops, eggs, alcohol, etc., etc. Connected with these dealings, the arrangements for insurance, storage, transportation, etc., which are required in connection with the commodities handled, may also be effected through the facilities offered by the organization of the exchange. The produce exchanges are of the greatest possible importance in international trade.

In the United States there exist some twenty-seven Grain Exchanges. The two greatest are the Produce Exchange of New York, and the Chicago Board of Trade, which are also the greatest produce exchanges in the world. Besides these two there may selected for mention those of St. Louis, Duluth and Minneapolis. London possesses in all six Produce Exchanges, each independent of all the others, Liverpool has two; Paris has its Bourse de Commerce, and Moscow possesses a grain exchange in addition to the general exchange. In the German centres, Berlin, Cologne, Mannheim, Königsberg, the produce exchanges, like the stock exchanges, are subject to government control.

(*c*) Special Exchanges are found in many great centres, the business on which is concerned with a single class of commodities. Thus, in London and New York, many such independent special markets are found, dealing respectively in Cotton, Coal, Oil, Iron, Metals, Leather, Wool and so on. In Leipzig a bookseller's exchange is established, in Magdeburg a great sugar exchange, in Liverpool and Bremen we find Cotton Exchanges, Coal and Iron Exchanges in Brussels, etc., etc. Recent additions to the list of such special exchanges are a coffee exchange in Rio de Janeiro, and a wine exchange in Genoa and in Verona. In Düsseldorf and in Essen, where one might expect to find special markets for mining and metallurgical products, these commodities are dealt in on the same exchange as stocks and bonds.

In respect of the character of their organization, exchanges fall into two classes. Some are subject to more or less of official control, others are private institutions. In the former we have institutions performing recognized public functions, and in view of this, the State requires them to fulfil certain stipulated conditions in regard to their organisation and procedure. They enjoy a considerable measure of independence, which, naturally, varies from country to country. Thus the produce exchanges of New York and Chicago afford illustrations of an interference by the State in their regulations different in degree and in kind from that exercised over many produce exchanges on the Continent of Europe. The exclusion, from engaging in operations on the exchanges, of classes of persons whose situation precludes the offer of satisfactory guarantees for the fulfilment of obligations undertaken, is one of the frequent conditions imposed on such exchanges by external authority.

The other class of exchanges, to which most of those of North America and all the English belong, are self-governing associations, incorporated as Joint Stock Companies with limited liability, and only subject to state control in the same manner as all other limited companies. They are somewhat exclusive in their organization, which gives many of them a club-like and plutocratic character. London possesses, besides the six grain-trading exchanges already mentioned, nine other produce exchanges independent of them and of each other. In North America the produce exchanges are commonly concerned with all kinds of grain and with provisions of various kinds as well. The rules, according to which all trading between members of an exchange shall be conducted, the forms to be observed, and the methods of settlement to be followed in case of disputes arising, are laid down by the authority of the members acting through their governing council or committee. Some of the most general principles embodied in such rules will be referred to in what follows, especially such as are exemplified in exchanges in various countries and are commonly adopted whatever commodity may be the subject of the dealings in question.

The actual business of the exchanges is conducted, as a rule, not by the buyers and sellers themselves, but by agents, known as brokers, acting on behalf of the real interested parties. In some cases the brokers are divided into classes, as, for instance, into officially appointed and private brokers. The former are, in Germany and Austria, for example, forbidden to conduct operations on their own behalf, whether directly or indirectly. Their remuneration is derived from the brokerage charge made for conducting a purchase or sale, the rate of which is generally fixed either by law, or by exchange-regulation, or by custom having almost the force of a law. On an exchange where many kinds of business are conducted, a broker may conduct only special kinds of operations, those in a particular class of goods, for example, or he may undertake any commission placed in his hands.

The purchase and sale of commodities, as conducted by brokers on regular exchanges, is for the most part arranged by simple word of mouth, a written contract being duly prepared afterwards and presented for confirmation. The fulfilment of the contract thus made on the Exchange takes place, not on the Exchange itself, but outside it. Neither payment nor delivery takes place on the Exchange. Within a time-limit determined by the rules and customs of the Exchange, the seller must deliver the goods sold and may claim payment for them from the buyer. The time interval between the making of the contract and its fulfilment may vary in length greatly, and a classification of business with reference to this time interval naturally results. When the interval of time between the making of a contract of purchase and sale and its fulfilment is so short that the operation may be regarded as practically completed on the spot, and cannot serve the purposes of speculation, it is designated a cash transaction or a spot transaction. The completion of the business by delivery of the goods follows on the same day or the following day, or at most within a very short interval of time. The usage in this respect varies in different centres. Thus, on the Paris Bourse, cash transactions must be completed before the fifth day after the date of the contract. The Berlin Exchange recognizes a class of transactions in which the parties may require fulfilment of the bargain on the third business day following that on which they are arranged. On the New York Stock Exchange all transactions are treated as cash transactions; they may require delivery on the next following day ("regular way") or within three days ("buyer three days" or "seller three days"). From the example of the American Exchanges it may be seen that even cash transactions can be made to serve the purposes of speculation, though only when combined with an operation of a different character; such as that designated "prolongation."

The class of dealings in which a considerable interval of time elapses between a contract and its fulfilment, where price differences dependent on time may find expression, are known as time bargains or "futures" (for future delivery). The date of fulfilment is, in these cases, a matter for special and definite stipulation between buyer and seller, though the customs of the market specify periods, rather than leaving these for random determination. Thus the "end of the month" or the "middle of the month" may be specified, or a particular month or even a series of two or more months within which one of the parties is free to fulfil his side of the contract. Thus, on the London Stock Exchange, the so-called "account days" occur twice in the month, or, for dealings in consols, bank stock, etc., monthly.

Similar conditions prevail on the Paris Bourse. In these cases the controlling authority fixes a definite day as that on which mid-monthly or end-of-the-month contracts must be met. On some exchanges we find rules, varying from place to place, defining the vague terms "beginning," middle" or "end" of the month. Thus on the cotton exchanges in Bremen, "beginning of the month'' means the 1st to the 5th inclusive: "middle of the month" means the 13th to the 17th, and "end of the month" means from the 25th to the last day of the month, both inclusive. Again, "spring delivery" means, in Hamburg, available not later than March 15th; while in Vienna a similar phrase applies to the period from March 15th to May 15th.

In addition to sales (or purchases) for delivery within an agreed-on future period of time, a very important class of transactions in relation to international trade is that carried on in reference to goods in actual process of transit from the place of origin to their final destination. "Floating cargoes" of grain or other raw produce, for example, are freely dealt in for delivery on arrival. By this means goods which have been shipped in advance of their sale may often be profitably sold before their arrival at the point to which they have been despatched, and the owner may select the most advantageous occasion, within the limits of the period of transportation, for disposing of them. A very general practice, too, is to send ships laden with commodities, for which such dealings are customary, to certain points on the way to their final destination, there to receive instructions as to the exact port at which they are to unload. Wheat from Argentina, sugar from Java and many other commodities are sent to the English Channel "for orders," there being a large choice of possible ports on the road to which the first part of the journey will be the same. If a sale of the cargo "to arrive" has been effected before the ship reaches the point where she is to receive her orders, nothing has been lost, and not a little may have been gained, by leaving the precise port of destination undetermined till the latest possible date. One of the difficulties in making up statistics of export trade in some cases depends on this custom, as the orders received at the point of call designated may be for a port in any one of three or four countries.

(b)

The tranactions for future delivery hitherto contemplated have been such as concerned actual commodities, to be genuinely delivered by the seller to the buyer at the agreed-on time or within the specified interval. Such transactions commonly take place on the basis of samples of the commodities concerned, so that the question of quality is one entirely open to the determination of individual pairs of buyers and sellers: the quantities dealt in, too, are not, in these cases, determined by the regulations of exchanges, but depend on the agreement between buyer and seller. Generally, moreover, such contracts cannot be transferred to third parties, or the buyer only is free thus to transfer his contract. Out of these contracts for future delivery, in which in each case actual delivery and acceptance are contemplated, has grown, in the course of time, a class of transactions of special character, in which an operator may balance sales against purchases, or purchases against sales, in such a fashion as to be concerned merely with the differences between the prices agreed upon as their basis. For such dealings, the goods bought and sold need to be capable of grading or classification with sufficient precision to permit the substitution of different parcels of goods for one another. When satisfactory agreements on the question of quality can be reached, the other important matters in the bargain are quantity, price and time of delivery. In the highly organized produce-markets of modern times, three of the four points involved are subject to rigid rules. The quality is determined with reference to more or less arbitrary standards, goods receiving a classification by which they are assigned to one or other of a series of classes defined with reference to these standards. The quantity dealt in is required to be a multiple of a unit specified in the rules of exchanges; while the time of delivery is defined in accordance with the customs which have grown up, and may not be fixed at random. Even the prices, in some cases, may not be varied quite freely and continuously, a recognized series of steps, each step of definite amount, taking the place of free and continous variation.

To illustrate these points, take the case of wheat. In this case the inspection of the grain results in its classification according to recognised standards and rules. Thus we have "No. 1 Northern," or "No 2 Red Winter," the classification in each case including a statement of the general character of the grain and the number indicating to which of the recognised series of classes it is to correspond in respect of quality.* In the matter of quantity, contracts may only be made for amounts which are multiples of a unit specified for each exchange. In Rotterdam the contract unit for wheat is 60 metric tons, or about 2200 bushels. The rules of the London Produce Clearing House specify 480,000 lbs as the unit, every transaction being for this amount of 8,000 bushels, or 1,000 quarters, or a multiple of it. In Liverpool the unit is 500,000 lbs. In New York "sales of grain in boat-load lots to arrive afloat shall be understood to mean 8,000 bushels of wheat; etc." The limit for dealings in the wheat Pit is 5,000 bushels. As to price, the limitations placed on its variation have reference mainly to convenience. Thus, to vary our illustration, until a few years ago, raw American cotton was quoted in Liverpool in pence and sixty-fourths of a penny per pound weight. It is now quoted in pence and hundredths of a penny, the decimal system being regarded as more convenient in this case. It remains to consider the specification of the time for the completion of the transaction. This is subject to the rules of the various exchanges, and may be any of the following:—

(a) Current month, i.e. at any time from the date of the contract to the completion of the calendar month in which it is made.

(b) A single month, i.e. delivery is possible at any time within the specified calendar month, i.e. contracts may be made now (December) for fulfilment in March next, or in May, or in July, etc.

(c) A double month, which extends the term for the fulfilment of the contract over two consecutive months.

(d) A longer future term, perhaps four or six months following each other. Thus on the Paris Bourse contracts are made for say, January-April (the first four months of the year), or for May-August (the four hot months) and so on.

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* The Rules of the New York Produce Exchange include, for example, the following :—

"No. 1.—NORTHERN SPRING WHEAT shall be sound and well cleaned, contain not less than fifty per cent. of the Hard Varieties of Spring Wheat, and weigh not less than 57 lbs., Winchester Standard."

"No. 2.—RED WINTER WHEAT shall be sound, dry, and reasonably clean, contain not more than ten per cent. of White Winter Wheat, and weigh not less than 58 lbs,, Winchester Standard."

(e) A period otherwise designated e.g. Spring or Fall. Each exchange where such contracts are made attaches a definite significance to these terms, and defines the limits of the periods specified.

It will be easily understood that when a sale or purchase occurs, not of a particular commodity, whether presented as a whole or represented by a sample or samples, but of a specified quantity of goods of a particular class or grade, for delivery at any time within a fairly extended period of the future, one and the same dealer may put through numerous transactions only distinguishable from each other by the amounts dealt in, and the stipulated prices. Any one of numerous contracts for the same amount of goods of the same class may be substituted for any other in everything except price. Sales and purchases may be made to offset each other freely, leaving as the sole matter of interest the relation of the prices of sales to those of purchases. Though each contract formally contemplates delivery of actual commodities, in reality delivery is not desired or intended in a vast majority of such cases. This is the class of transactions which provides scope for mere speculative dealing. A dealer need not concern himself over provision for handling any large quantities of the actual commodity, and need not even control a very considerable capital, in order to derive gains from the fluctuations of price occurring from time to time. The buyer looks for a rise in price, and a resale which may relieve him from the necessity of accepting delivery while it affords him a profit; the seller need not be in possession of the goods he has contracted to deliver at some future time, since he hopes for an opportunity to purchase these goods, before the time for delivery arrives, at a lower price than that on the basis of which he has effected his bargain, and thus to come out of the affair with a profit. The extension of the range of these speculative dealings, so that a larger and larger circle of persons becomes concerned in them, develops a complicated network of transactions, in respect of which neither delivery of goods in bulk, nor the corresponding payments, are contemplated, but only the arrangement of price-differences. Thus dealings for future delivery degenerate into simple speculation in "differences."

A special technical apparatus for smoothing the complications of such transactions has been developed in connection with the exchanges on which they take place. A clearing-house is established, which is duly notified of the contracts made, and can thus arrange for the offset of purchases by sales, or vice versa, for each speculator, reducing the amount which may call for actual delivery or payment to the lowest possible figure. These institutions for the settlement of speculative transactions in futures are of comparatively modern origin. Thus that associated with the Liverpool Cotton Exchange dates only from 1876. In different places the names by which the organization for clearing is known differ, but the general purpose and scope of the operations effected are similar in all the great centres. Practically all transactions are cut out in so far as one and the same person is both buyer and seller of goods which can be substituted the one for the other, and the determination and payment of the balances arising out of the varying price-level affecting the transactions of each dealer is arranged. The principle involved resembles that applied in the work of a Banker's Clearing House. When a long series of transactions has occurred, A selling to B, B to C, C to D and so on, so that the final purchaser is, say, M, the delivery of the goods can be effectively made by A to M. This is arranged simply enough by the passing of a document variously designated as a "declaration of tender" (in England), a "transferable order" (New York) a "notice of delivery" (Chicago), a "filière" on French bourses, etc., etc. Passing by endorsement from one to another along the series of dealers, it provides a means by which the first seller and last buyer are brought into direct relations, and the dealer who actually has the goods can deliver them to the dealer who desires to receive them and to pay for them in full, the intermediate dealers being concerned only with the differences between the prices of purchase and sale. If it should happen that A has also purchased a like quantity of the commodity from M, for delivery at the same place and within the same time-limit, a complete ring of transactions is established, and no actual tender of, or payment for, the goods is necessary, formal documents alone being passed and differences only being paid. The organization of the clearing house affords the greatest possible facilities for the rapid and smooth settlement of the business transacted in this way.

In case of the failure of the original seller or the final buyer to fulfil the obligations into which he has entered, the officials of the exchange intervene for the protection of the other parties to the transaction. The failure to deliver is met by a purchase of the proper quantity at the price ruling at the time of the settlement, any unfavourable difference between this and the contract price constituting a claim on the defaulting broker. Similarly, when a buyer fails to meet his obligations, the goods concerned may be sold under the authority of the officials of the exchange, and any deficiency in the price obtained at such open sale as compared with the contract price becoming a claim on the broker at fault. It is clear that considerable inconvenience, and even loss, may result in some cases, and consequently the standing and credit of the broker with whom any contract may be made is a matter of importance. How far this reaches may be illustrated from the case of the Berlin produce exchange, after the prohibition by law, in 1896, of future dealings in grain and mill products. The recovery of moneys becoming due through such transactions could no longer be effected by the agency of the regular legal tribunals, since they did not recognize the transactions in question. Of course the extent of the dealings of this class fell off very greatly, but they did not entirely cease. The writer received very positive assurances from reliable authorities, when visiting Berlin in 1900 for the purpose of inquiring into the actual results of the legal prohibition of time-bargains, that a far from insignificant business in futures was still transacted, resting for its security on the business honour of the brokers concerned. With this statement was associated the assurance that in no instance had any of these bargains been repudiated. It should be added, in this connection, that, under the circumstances, none would make a contract of the proscribed nature with any one in whom he had not entire confidence. Being deprived of the ordinary recourse for the enforcement of obligations, all took care only to make bargains with persons in reference to whom there was no doubt of their fulfilling contracts made. This consideration alone involved a considerable limitation of the business done.

In ordinary cases, a means of supplying a guarantee against eventual loss, arising out of speculations in price-differences, is afforded by the system of depositing a sum of money with a third party to cover the amount of possible loss. This margin-system has been very extensively developed on the American Exchanges, by the rules of which the parties to a transaction become entitled to require, each of the other, such a deposit of caution money. In Chicago, the amount of the margin which may be called for by either side is ten per cent of the total price of the goods bought and sold. In the event of movements of the price, the amount of the deposit may be required to be maintained at the stipulated proportion. In New York the margin which may be called is ten cents per bushel for wheat, rye and barley, five cents per bushel for oats, one dollar per barrel for mess pork, etc., etc. With such margins maintained, the probability of ultimate loss through default of the brokers concerned is greatly reduced. The failure to maintain a margin should serve as a warning to the party to whom it affords security that he requires to close a transaction which threatens loss; while it will only be in very excited markets that the official intervention and selling out, or buying in, at the price of the day, to which reference was made above, would involve a loss exceeding the regular margin. Incidentally, considerable sums of money are tied up in the provision of such deposits. It has been estimated that five million dollars are needed for this purpose on the average in Chicago.

In connection with dealings in futures, reference may also be made to another class of dealings conducted on the great exchanges, known as "option" dealings.* In these transactions we are concerned, not with a definite purchase or sale, but with an arrangement assuring the opportunity for a purchase or a sale within a determined limit of time. They are of three varieties, namely, puts, calls and straddles or double options. In the first case, for a sum of money paid down, one broker, A, assures himself of the opportunity for selling to another, B, should he desire it, at a price agreed on; the amount to be sold and the time-limit within which A may exercise his option to require B to purchase are definitely stipulated in the bargain. Should the price of the day fall below the price mentioned in the contract, A can secure a profit by purchasing at the current quotation and calling on B to pay the price named in the option. Similarly for a "call" option, where A purchases from B the right to demand delivery of specified goods at an agreed price within a stipulated time-limit. The double option or straddle combines the put and the call, conferring on one of the parties the right to require the other either to purchase or to sell, as may be demanded, at a price agreed on. It is clear that, while, in one aspect, options afford a desirable security to business men that they may avoid losses beyond a certain amount in perfectly genuine dealings, they also afford a field for the purest speculation. Practically the seller and the buyer of an option are betting on the extent and, in the simple option, on the direction, of price variations. If prices are very steady, an option must be sold at a very low price if it is to afford a reasonable opportunity for the buyer to recoup his outlay. In the case of ordinary dealings in futures, too, the tendency is for the differences between the prices for delivery in the different months to correspond with the expense of carrying the commodities, storage charges and interest practically accounting for the price differences. When, beyond this, a change in price-level is in progress, an active market in futures tends to give effect promptly to the influences under which that change is being brought about. A very active market is generally also a sensitive market, liable to be affected, not only by actual conditions as they are made known and in so far as they bear on the market in question, but also by rumours, baseless or well-founded, and thus arises opportunity to put into circulation rumours void of foundation, purely invented for the simple purpose of influencing market prices. It is probable that, even without the arrangements which are made to render dealings in futures easy, dealers with large funds at their disposal could manipulate prices to a considerable extent. It is, further, quite admissible that the actual system of dealings enables a comparatively small capital to exert the same influence that might be wielded by a large capital without that system. But the organization developed in our Exchanges to facilitate business is not the cause of speculation, or of the evils associated with it, however much aid it may seem that speculators derive from that organization. And, further, modern business finds the system of regular dealings in futures a valuable means for lessening some of the risks which manufacturers and merchants necessarily undertake. The owner of elevators in the wheat growing regions, who may find himself unable to secure transportation facilities for all the grain brought to him, may nevertheless guard himself against loss by making contracts to deliver his grain at a period sufficiently far ahead to assure him the opportunity of sending forward the grain in the interval; and the miller who desires to secure a supply of grain for use some time ahead can readily do so, through the agency of the futures market, at prices which are matter of public knowledge and are settled as the result of keen competition. It is frequently a subject of complaint that the sales and purchases of wheat and other products for future delivery vastly exceed in amount all that which could be delivered in any one season. It has been stated that a fair estimate of business in Chicago would show hardly one-tenth of the trading in wheat to be done by persons handling actual grain, the remainder being done by speculators. Even in Liverpool, where actual grain is at the back of a much larger proportion of the total business, the records of wheat tendered against contracts show a very small proportion to the trading in futures. The fact is that it is not at all necessary that a given parcel of wheat should be tenderable against a regular contract to enable that contract to insure the owner of the wheat pretty effectively against loss through price fluctuations. In England, for example, large quantities of wheat are received from Roumania, Bulgaria, the Baltic, etc., and these varieties are not tenderable against a contract for future delivery of American wheat. But the main fluctuations of wheat prices affect all classes of wheats, and, in general, these main movements are more important than the special fluctuations in virtue of which special kinds of wheat undergo price changes which differ from those which affect other varieties. So far as concerns the main movement, therefore, the contract which would insure the holder of American wheat against loss through unforeseen price-change, will equally insure the holder of other kinds of wheat against loss from the same cause.

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* "Options" or "privileges" are illegal in Illinois.

An illustration of what is meant may be found in the following quotations for February 17th and March 10th of the current year (1906). The prices at New York were, for No. 2 Red for Export 90 1-2 cents per bushel and 84 7-8 cents per bushel respectively. The opening prices for May futures on the same dates were 89 1-16 and 83 1-4 respectively. The report of business in London on the preceding day in each case showed, among other items, sales of Rosario-Santa Fe, 62 lbs, which was quoted, on passage, 30s 6d at the earlier date, and, afloat, 28s 9d at the later of the dates named. Comparing these quotations we find a fall in the price of American Red wheat at New York of 5 5-8 cents per bushel, or, say, 1s 10 1-2d per quarter, and a fall in the Argentine quotation of 1s 9d per quarter. Meanwhile the May future in New York, the movements in which are closely paralleled in London, had fallen 5 13-16 cents. It will be seen that we have here a common movement in the three quotations to the extent of 5 1-4 cents, and that the differences between the movements are comparatively small. The sale of May futures in American wheat against a purchase of Argentine, and their subsequent repurchase on the sale of the actual Argentine grain, would have eliminated most of the risks of loss from price-change. Apart from commission charges, the futures operation would have yielded a profit of 1s 11d per quarter to offset the decline in price of the Argentine wheat by 1s 9d per quarter. The illustration, even if it be not perfect in every respect, may serve to illustrate the principle to which attention was called, namely, that operations in the regular futures contract for American wheat may be conducted in connection with the actual handling of grain, even though the grain in question could not be offered in fulfilment of the contract, so that not all the futures-trading in connection with which no tender is made can be condemned as trading in wind-wheat. The attempt to differentiate the merely speculative transaction, concerned only with price-differences, from that in which the actual commodity is concerned, is by no means an easy matter. The wording of the contract in either case is the same, and actual delivery and payment are specifically provided for. But, even if it were possible to discriminate effectively between dealings in which the actual grain is owned or sought for by those concerned, and dealings in which price-differences alone occupy their attention, the use of the futures contract in support of thoroughly legitimate business is not limited to the cases in which the seller owns grain which can be delivered and the buyer desires to take delivery of the stipulated quantity in fulfilment of his contract. In attempts to hamper harmful speculation, the greatest care is needed lest processes which add to the security and steadiness of genuine business be hindered as much or more than those which are merely speculative.

The vast mass of transactions which take place on the great Produce or Stock Exchanges of the world cannot but give rise to disputes of one kind or other, for the prompt and definite settlement of which each exchange establishes a suitable court, or Arbitration Committee or Board. In the cases in which the control of the affairs of the Exchange is shared in by the public authorities, the composition and operations of the Arbitration Committee will not escape official interference, though in several of the most important of the Exchanges concerned, the personnel of the Arbitration Committees is left for determination by the membership. When several varieties of commodities are handled on one and the same Exchange, experts in the different branches of business will be included in the list of members of the arbitration board, where the selection of arbitrators is not co-extensive with the membership, so that, in every case, a jury of experts may be available for deciding disputes. There are many points on which disputes may arise, but that calling for the most frequent treatment relates to the correspondence between the quality of commodities tendered in fulfilment of contracts and that of the samples or grades to which the contracts refer. In some classes of contracts, fulfilment can only be made by the tender of commodities of not lower quality than that specified in the contract, and if, in order to meet his obligations, the seller finds himself compelled to deliver a superior quality, he must himself bear the whole cost of doing so. In other cases provision is made for a variation of quality within certain defined limits, and a corresponding allowance in the price, and here the decision as to the amount of the price allowance is obviously a matter in which the services of arbitrators may be required. The contracts themselves commonly include a clause agreeing to submit disputes arising out of them to the Arbitration Committees of the Exchange.

To illustrate the matter of compensation for variations in quality, we select the case of the wheat contracts made on the Paris Bourse de Commerce. On these contracts, grain may be refused which contains more than two per cent of foreign matter or of hard grains or more than five per cent in all of small, inferior or damaged grains and foreign substances together. For excess over three per cent in the latter case, the buyer may claim, for each 1-2 of one per cent over three per cent, an allowance of 1-2 of one per cent in the price. The contract is based on a weight of 77 kilograms per hectolitre. (60 lbs weight per American bushel is 77.2 kilograms per hectolitre.) For less weights, an allowance of 1-2 per cent on the price is made for each 1-4 kilogram of deficiency in weight, provided that the weight do not fall below 75 kilograms per hectolitre (about 58 1-4 lbs per bushel). For weights in excess of 77 1-2 kilograms per hectolitre, the allowance for admixture of matter other than good grains of wheat is increased beyond the three per cent above-named, an extra 1-2 per cent of admixture being allowed for each half-kilogram of extra weight up to a weight of 80 kilograms per hectolitre, beyond which the limit of six per cent of other substances is not increased. English wheat is subject to special rules, differing from the above. The mode of applying allowance rules is sufficiently illustrated by this case without further examples, and the need of some authority to determine the amount of allowances, and whether grain tendered is of proper quality, will be obvious.

As a very important part of its functions, the collection, and dissemination among its members, of information bearing on the supply of, and demand for, the commodities in which they deal, is undertaken by all exchanges. If agricultural products are in question, such information as relates to weather conditions in different parts of the world may be of the first importance. The volume in which the various commodities may be forwarded from the places of their production, the prices at which dealings take place on other important exchanges, shipping news and so on, as well as the local situation and dealings, are matters which affect the interests of members of a produce exchange, and in obtaining reliable and prompt information on which they are aided by the organisation of the Exchange. The Exchange thus facilitates intelligent dealings and provides an apparatus for enabling them to be conducted with the least possible hindrance and the greatest possible speed and security. Its rules bind its members, who must submit to them as a condition of membership. As the rules also serve as an important guarantee to the public on whose behalf the dealings are effected, insuring publicity and guarding against the mischiefs which might arise through breeches of contract, it is a matter of no small public importance that such organizations should exist and that the major part of the wholesale trading should be conducted through their agency. The outside broker is free from the restraints imposed by the Exchange rules, and it is probable enough that this freedom may occasionally permit him to serve his client more effectively than a regular Exchange broker could; but the freedom from restrictive regulation, the absence of the same kind of publicity about his dealings, may enable him, and constantly do permit him, to take advantage of the ignorance of clients to their serious loss, and his pecuniary gain. Honest and honourable brokers doubtless exist outside the ranks of members of regular Exchanges, and the membership is not wholly free from black sheep. On the whole, however, the Exchange broker is prevented from taking advantage of his clients, and they are secured from suffering through his default in large measure, while the outside broker has an unenviable reputation for preying on the ignorance and cupidity of those who entrust him with the conduct of their speculations.

Reference has been made in the foregoing to the differences in the standards of quality which are recognized for the same commodity on different Exchanges, and to the different units in terms of which the time contract is concluded. The price quotations employed at the different centres differ in corresponding fashion, and it may be worth while illustrating these differences, without attempting, on the present occasion, to enumerate with any approach to exhaustiveness, the modes of quotation of even the most important commodities or of the largest trading centres.

The quotations of prices have reference always to a determinate amount of the commodity in question; in most commodities of great importance in the commerce of the world, the amount is determined by weight. Prices are quoted per lb., per cwt., per ton, per kilogram or half-kilogram (metric pound) or per thousand kilograms (metric ton), etc., etc. Thus, coffee is quoted on the Exchange in London per cwt., in New York per English pound, in Bremen, Hamburg, Amsterdam and Rotterdam per metric pound, in Havre and Vienna per 50 kilograms. Wheat is quoted in Odessa per pud (36.1 lbs. English), in Vienna per 50 kilograms, in Liverpool per 100 English pounds, in Berlin per metric ton, and in Amsterdam per 2,400 kilograms. A knowledge of the units to which a particular market's quotations refer is therefore of very great importance for ready interpretation of those quotations. We have, not merely a difference of currencies in terms of which the quotations are made, but a difference in the quantities of which they express the current price.

In some cases the quantity quoted is expressed in a measure of volume, as when the gallon is used in English quotations, the litre or hectolitre where the metric system prevails, and so on.

In yet other cases a unit of number is used to express the quantity of which the price is quoted. Thus we have prices for a single article, a pair, a dozen, a score, a hundred and so on.

In addition to the unit of quantity involved in a price quotation, the quality to which it refers must be considered. Taking again the case of coffee, the futures trading in Hamburg and Havre is done on the basis of "Good average Santos," in London on "Rio fair channel," in Marseilles "Rio bon ordinaire." In cotton trading we have, if American cotton is in question, either "Sea Island" or "Upland" to designate its source, and further to define its quality a series of terms such as "good ordinary" or "middling;" for East Indian cotton "Oomra" or "Tinnivelly" or other designation of the locality of production is joined to a description of the grade, such as "fine" or "fully good fair;" and similar descriptions differentiate various classes of Egyptian or Brazilian cotton. In wheat trading we have the system of grading already referred to for American wheats, while for wheat from other sources suitable definitions of quality, generally based on weight, are used. Thus "Australian wheat 504 lb." denotes wheat of the origin specified and to weigh 504 lbs. per 8 imperial bushels; the Vienna quotation "Rumanian wheat, 80 1-2 kg" would refer to wheat of the specified origin and to weigh 161 metric pounds per hectoliter (about 62 1-2 lbs. per American bushel).

An important point in the determination of price is the place of delivery of the commodity bought or sold. In what was said above in reference to the essential features of a contract, no specific reference was made to this point. It is, however, obvious that the place of delivery may have a very important bearing on the price. It is by no means a matter of indifference to a purchaser of (say) 50,000 bushels of wheat from Manitoba, whether it is to be delivered to him in Winnipeg or in Fort William, or in Montreal or in Liverpool. The terms of the contract of sale determine the place of delivery, therefore, as an all-important element in the transaction. The more usual methods of designating the conditions of delivery include the following:—

(a) Price *ex-store or warehouse.* In this case the goods must be taken from the seller at the warehouse or store in the place to which the sale refers, and may be either duty paid or not, according to agreement.

(b) Price *free on board* (f.o.b.) or free on rail or waggon. On these terms the seller has to deliver the goods at his own charges, on the vessel or car which is to convey them away.

(c) Price *c. f.,* or *c. & f.* (cost and freight). In this case the seller has to pay, not merely the charges up to the loading as in the preceding, but, in addition, the freight to the place of destination, but not the marine insurance.

(d) Price *c.i.f.* (cost, insurance and freight) or, in French *c.a f.* (coût, assurance, fret). This mode of quotation coincides with the preceding except for the fact that the seller undertakes the expense of insurance on the goods while in transit to the point of destination.

The quotations c. f. and c. i. f., are very usual in connection with international trade, especially over sea trade to Europe, inasmuch as the buyer is relieved of the risks attaching to the fluctuations in ocean freight rates.

(e) Price *ex-quay* or *ex-warehouse* at the point of arrival of goods from a distance, as for example, at a European port in the case of imported goods. This case carries us the final step, as the goods in this instance require to be delivered, not on board the ship which has transported them, but unloaded on the quay or from a warehouse in the port of arrival. This condition of sale, therefore, completes the series of steps, begun with delivery from a warehouse at the place of origin, and, in the different stages, imposing on the seller a continually increasing burden of responsibility and expense, while relieving the buyer to the same extent from these incidents. The price-level for one and the same class of goods will naturally rise with the inclusion of the charges of transportation and delivery, so that the terms in the contract which specify the place of its fulfilment are of fundamental importance as already remarked, and illustrated by the series of methods of quotation here set forth.

The natural opposition between buyers and sellers, which reigns in every market, becomes intensified on the great produce exchanges to a strife between two powerful sections. The buyers form an army whose members are counting on a rise of prices; these are the *bulls* (in France, *mineurs*). Each and all of them has undertaken the obligation to accept delivery of goods within a definite period of time, but does not purpose to retain this obligation, desiring rather to sell the goods, before it matures, at a higher price. He has no interest in the goods themselves, only in the difference which may occur in the level of quotations for the delivery concerned, and which may enable him to sell, at the hoped-for higher price, a contract which he has taken over at a lower level. The *bears* (in France *contre-mineurs*) are in an exactly opposite situation. As sellers they are interested in falling prices, since they have sold goods which they do not possess (shorts, à decouvert) but hope that, shortly before the date for delivery arrives, they may be able to supply themselves with the goods required at a price lower than that which they are entitled to receive from their buyers.

This statement of the situation leads us, itself, to the advantages and disadvantages inherent in the institution of futures dealings in commodities. It creates, first and foremost, the most extensive market conceivable for a commodity, since it concentrates the demand and supply of the entire world so far as concerns that commodity. Not only the known and visible supplies, but also the chances of harvests or of industrial production, are made effective on the supply side of the market, all dates of production, and all harvest results being practically brought together at a single point. On the other side the volume of consumption is, in view of the long experience and the expertness of the estimators, a fairly definite element in the problem. Thus the conditions are set up for the establishment of a price-level corresponding naturally to the position of affairs at the moment in commerce and industry throughout the world. The consumer, especially the manufacturer, is thus placed in a position for covering his need for raw materials at all times at a price determined by the actual situation as concerns the commodity in question. The producer, on the other hand, can bring to market as great quantities of goods as he pleases without having to dread a disorganisation of the price-level through a sudden large output. These are, at any rate, the ends towards which the market organization of modern times tends. The consumer is protected against overcharge, the producer against a slump in prices. The concentration of supply and demand, the elaboration and efficiency of the collection of information, which links the exchange itself with the most important centres both of production and of consumption, and the expert knowledge of those who take part in the business of the exchange, enable a general view of the position of the market to be secured, than which none could be more complete. This general view is communicated to all who interest themselves in the matter, not merely to the actual operators on the market, since the price-quotations and the information which serves to determine them are regularly made public in newspapers and technical journals. The fact that such a general view of the market is made possible, and that the commodities themselves are rendered so readily transferable, operates to bring about the greatest conceivable levelling of prices. The prices are constantly fluctuating, it is true, but the movements are checked whenever factors external to the market itself do not support them, and they are thus restrained within limits which are comparatively narrow. In any case merely local causes are rendered powerless to control them, and customs boundaries or political frontiers are made subordinate to world-wide economic developments. Whatever occasional appearances to the contrary may seem to indicate, the results of careful public and private inquiries alike have rendered this conclusion tolerably certain. The misuse of the facilities afforded by a form of organization which is in itself useful and justifiable by no means justifies a condemnation of the institution itself. In times of rising prices weak traders may engage themselves in enormous transactions, whose extent has no reasonable relation to the resources which they can control. Should a halt in the upward price movement supervene, or a reaction occur, forced realisations on a considerable scale may be induced, together with a flood of short sales, and a panic arise. An Injurious interruption of the continuity of business can, then, be effected by the action of firms who combine to corner the market, and dictate prices. Yet such speculations are seldom of long duration when they concern commodities the dealings in which throughout the world are of great extent and importance. The interests involved are so large that it is difficult to bring the markets of the world under effective control for a lengthened period, and the manipulators of corners are themselves likely to be involved in overwhelming loss, even though, by way of exception, a successful outcome may be achieved from time to time.

A. W. FLUX.

LECTURES ON THE BANK ACT.

LECTURE V.

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A. Rives Hall.

(3) *Advances on Security of Stock, Bonds and Debentures:*

The word "stock" in this section would include not only such corporation bonds and debentures as are sometimes called stock, and debenture stock, when authorized by statute, but also the shares or capital stock of joint stock companies. These latter are not negotiable in the ordinary sense, but are usually assigned or transferred in the books of the Company in accordance with the provisions of the governing statute or by-laws.

The power of a bank to "deal in" the stock of such corporations would probably not be held to justify their dealing in them as brokers, investors or speculators. By acquiring a controlling interest, for example, in trading or loan companies they might come within the spirit of the prohibition as to engage in trade, or lending upon mortgage. Their dealing in them should be in the way of a banking business.

However, in a leading English case (Barnes Banking Co. L.R. 3. Ch. 105) similar words were held to authorize a company to take shares in another company, and in a later case (Royal Bank of India L.R. 4 Ch. 252) Lord Cairns remarked, "there is not either by common or statute law anything to prevent one trading corporation from taking or accepting shares in another trading corporation......I apprehend that making advances upon shares in public companies is within the ordinary course of the dealing of bankers. Then it is said that the consequence is one of very great hardship, as involving the shareholders of a bank in a great number of liabilities in respect of other companies with which they had nothing to do, and many cases have been suggested in argument, such as that of bankers becoming partners in a brewing company, or a shipping company, or many other things with which in their own articles of association they had no connection whatever. But I think the answer to that is that such dangers are necessarily involved in lending money upon securities of this kind."

The only prohibition under our Act is as to its own stock or the stock of another bank.

Even where certificates are issued to represent such shares or stock they are not recognized as being negotiable, the bank takes them therefore subject to any defects in the title of its transferor.

For instance, the holder of shares in a company deposited the certificates with C as security for £150 and executed a transfer with the transferee's name in blank, and C deposited the certificates and transfer as security for £250 with D. After C's death D filled in his own name as transferee. It was held that D had no title to the shares beyond a claim for the £150 advanced by C. France vs. Clark 26 Ch. D. 257.

In London County Bank vs. River Plate Bk. (20 Q.B.D. 232) share certificates of the Penn Ry. with blank transfer forms endorsed on the back, were stolen by a bank manager and pledged with the plaintiffs for his private account. He afterwards obtained them back from the plaintiffs by fraud and restored them to his own bank. Held that they were not negotiable instruments and that the pledgees had no title to them.

In another case (Williams vs. Colonial Bank 38 Ch. D. 388) the executors of a shareholder in a N.Y. Ry. executed blank transfers which were endorsed on the back of the share certificates and handed them to a broker for sale. The broker fraudulently pledged them with the bank for advances to himself. It was held that the executors were entitled to have the certificates back from the bank.

"It is admitted," said L. J. Bowen, "that the certificates are not negotiable instruments according to English law. The broad principle is that, except in the case of a sale in market overt, a person does not acquire a title to a personal chattel from anybody but the true owner.

When the bank holds shares of a joint stock company as collateral security for advances, it cannot be held liable for calls on such shares. But where a loan company was authorized to lend money on bank shares, and accepted transfers, absolute in form, it was held liable for calls. The same ruling would probably apply with equal force to a bank that accepted absolute transfers, so the better course would be to take shares not fully paid up only as collateral.

Bonds and Debentures:

In dealing with bonds the position of the bank is much safer and stronger, for it is now well established that bonds payable to bearer are negotiable instruments.

The leading case is: London Joint Stock Bk *vs* Simmons 1892 A. C. 201.

In this case the facts were as follows: In October, 1887, Herapath, Delmar & Co., a firm of stockbrokers, had in their possession, for safe custody merely, bonds of $15,000, Cedulas belonging to Simmons. On the 12th October, Delmar, on behalf of his firm entered into a contract with Prior and Williams, jobbers on the Stock Exchange, to sell them $15,000 of Cedulas for the settling day of the 14th October. At the same time he contracted with Prior and Williams to purchase of them like bonds of the same amount for the account of the 28th October, the price of these latter bonds being the same for which the former were sold, the interest at the rate of 6 per cent for 14 days added. On the 14th October, in pursuance of the contract of sale, Delmar's firm delivered to Prior and Williams, or their nominees, the bonds of Simmons. On the 28th October, in pursuance to the simultaneous contract of purchase, Herapath, Delmar & Co. received from Greenwell & Co. a firm of brokers whose name appeared on the clearing ticket given by Prior & Williams, Cedula bonds of the same description and to the same amount as those which had belonged to Simmons. The bank had for many years been in the habit of making advances on stocks, shares and bonds. The securities deposited were frequently changed, such changes generally taking place at cr about the time of the fortnightly settlements on the London Stock Exchange. On the 28th October, that firm obtained from the bank a temporary advance of £6,500, in addition to the then current loan; and, in addition to the securities, which the bank then held for the moneys already advanced, and which, by the terms of their security, they were entitled to hold for any further advancement, the firm deposited with the Bank Cedula Bonds which they had obtained from Greenwell & Co. on that day. The bonds were obtained from Greenwell & Co. in exchange for a cheque on the bank, and without the advance of the £6,500 the firm would not have had at the bank sufficient funds to meet that cheque and the other cheques drawn by the firm of that day. Delmar afterwards absconded, and his firm suspended payment. The bonds having been sold by the bank, Simmons, on discovering what had been done, sued the bank, alleging that Delmar had pledged the bonds without his authority.

It was held by the House of Lords that there having been, as a matter of fact, no circumstances to create suspicion, the bank was entitled to retain and realise the security, they being negotiable instruments, and the bank having taken them for value and in good faith.

The grounds of this decision appear sufficiently from the following passages in the judgment of Lord Herschell; "I shall assume," said His Lordship "for the purpose of my opinion, that these bonds were the property of the plaintiff. The first question which arises, and to my mind a cardinal one, is, are these bonds negotiable instruments?......having regard to the evidence......given, to the nature of the bonds, and to the decision of this house, in the case of Goodwin *vs* Robarts, I can entertain no doubt that these Cedula Bonds are negotiable instruments within the perview of that decision...... It is surely of the very essence of a negotiable instrument that you may treat the person in possession of it as having authority to deal with it, be he agent or otherwise, unless you know to the contrary, and are not compelled, in order to secure a good title to yourself, to enquire into the nature of his title or the extent of his authority......I should be very sorry to see the doctrine of constructive notice introduced into the negotiable instruments. But regard to the facts of which the taker of such instrument had notice is most material in considering whether he took in good faith. If there be anything which excites the suspicion that there was something wrong in the transaction, the taker of the instrument is not acting in good faith, he shuts his eyes to the facts presented to him and puts the suspicion aside without further enquiry. The bank did not know, and had no reason to know in what capacity Delmar became possessed of the bonds. They might be his own; he might be purchasing them for himself or a principal, and be seeking by an advance from the bank to obtain the means of paying the price, or they might be bonds on which he himself had made an advance. I cannot see that there is anything to suggest to the bank that he was committing a wrong or to make it reasonable and right that they should make further enquiry before entering upon the transaction. I desire to rest my judgment upon the broad and simple ground that I find, as a matter of fact, that the bank took the bonds in good faith and for value. It is easy enough to make an elaborate presentation after the event of the speculations with which the bank managers might have occupied themselves in reference to the capacity in which the broker who offered the bonds as security for an advance held them. I think, however, they were not bound to occupy their minds with any such speculations. I apprehend that when a person whose honesty there is no reason to doubt offers negotiable securities to a banker or any other person, the only consideration likely to engage his attention is, whether the security is sufficient to justify the advance required. And I do not think the law lays upon him the obligation of making any enquiry into the title of the person whom he finds in possession of them; of course, if there is anything to arouse suspicion, to lead to a doubt whether the person purporting to transfer them is justified in entering into the contemplated transaction, the case would be different; the existence of such suspicion or doubt would be inconsistent with good faith. And if no enquiry were made, or if on enquiry the doubt were not removed and the suspicion dissipated, I should have no hesitation in holding that good faith was wanting in a person thus acting."

You will notice how different was the position of the bank in this case, from that of the bank in Williams *vs* the Colonial Bank, where the documents misappropriate were stock certificates. There the bank was ordered to return the shares to the real owners, because they were not negotiable, and the bank could not acquire a valid title, although it was not aware of its customers' fraud.

Such instruments then, particularly when payable to bearer, require no other proof of proprietorship than simple possession, and hence the rule of law applicable to actual commodities, viz. that the sale of a thing which does not belong to the seller is null, cannot be invoked with similar effect in regard to promises to pay; and this is so even though the bonds be long overdue, the fact that they are overdue not being alone sufficient to destroy their negotiable character, or to put the person advancing the money on his guard. (MacNider *vs* Young 3 Q.B. 539.)

In the U.S. such bonds as well as Federal or State Bonds are generally considered to be negotiable in the highest sense of the term—as are also interest coupons.

That coupons are independent negotiable instruments has also been held by our Courts. This was held in a case of DesRosiers *vs* Montreal Rutland & Boston Ry. (6 L.N. 388) which was an action for interest, represented by overdue coupons. The late Sir Francis Johnson held that each of them was a negotiable instrument payable on a certain day, and if the debtor allowed the day to pass without paying or extending payment, interest would run in favor of the holder, without any obligation on his part to put the debtor in default.

Municipal Debentures:

The Bank Act does not restrict advances by banks to debentures issued only by municipal bodies in Canada. Care, however, should be taken to see that they are authorized by statute, and that the requirements of the statutes under which they purport to have been issued have been complied with.

It has been held that where the power to issue debentures for a given purpose exists, but there has been some irregularity in connection with the passing of the by-law or non-compliance with certain directions, the corporation is estopped from denying the validity of the debentures in the hands of a bona-fide holder (Webb vs Com. of Herne Bay L.R. 5—Q.B. 642.) Where, however, the debentures refer to a by-law and the by-law on its face shows that it is for a purpose not authorized by law the debenture is invalid. Confederation Life *vs.* Howard, 25 O. 197.

We have seen in discussing the powers of borrowers that the bank must, when dealing with corporations, carefully examine their powers to assure itself that they have authority to borrow. The same rule applies when the obligations of corporations are offered to a bank as security for an advance. It is the banks' first duty to ascertain whether such obligations are within the ordinary scope of such corporations or if not, if they have been specially and legally authorized by proper authority. We have recently had striking examples of the necessity for this caution, in the cases of Hanson *vs* Gatineau Point and Hanson *vs* Grand Mere, both of which dealt with debentures guaranteed by municipal corporations.

The Municipal Council adopted a by-law authorizing the execution of a contract with the Stadacona W.L. & P Co. to construct and complete a system of water-works, and agreed to guarantee the interest and capital of the bonds which the Company might issue to a certain amount. Now by our Revised Statutes by-laws creating such a liability as that invoked in the present case must be authorized by the Lieut.-Governor of the Province and approved by a vote of the electors. No such authorization was obtained, and no such vote was taken.

However, debentures to the value of $10,000 were signed by the municipal officers, and handed to the secretary and manager of the company who transferred them for their full value to the plaintiffs Messrs. Hanson. The work upon the pretended system of water-works and sewers, was almost immediately discontinued and was never resumed. It is almost needless to say that upon maturity of the first debenture in the series, the company made default, and the holders took action against the municipality. The action, however, was dismissed because the by-law was unauthorised and invalid for want of submission to and approval by the Lieut.-Governor-in-Council.

The negotiability of municipal debentures is sometimes restrained by a provision for registration in the books of the corporation, but ordinarily they are regarded as negotiable instruments, and bona-fide holders for value are protected.

Other Collateral Security:

At first sight the terms of section 64 would seem to restrict the power of a bank to make advances on collateral security, to the securities therein mentioned, namely bills, notes, other negotiable securities, and stocks, bonds, debentures, etc., but it is well known to every one who has a practical knowledge of banking, that this list by no means exhausts the securities taken and acted on by the banks. Among other securities, we may mention notarial assignments of sums payable under contracts, by means of which contractors are enabled to carry on their undertakings, transfers of future rents by property holders, and even assignments of book debts. Whether such collateral may be held against other creditors is a question that as yet remains unanswered. Technically the transaction may come under the provisions authorizing the bank to engage in a general banking business, which is undoubtedly the advancing of money to assist its customers. The advance too may be on the immediate security of a promissory note, and the assignment may be taken as a secondary or supplementary security. But it is possible that other creditors might attack the transaction should the customer be or subsequently become insolvent. Much would of course depend on the circumstances of the case, and the fact that there is a long established custom in favour of such advances would doubtless carry great weight with our courts in deciding as to their validity.

So far as I have been able to discover there is only one case on this subject, recently decided by the Superior Court. The advance in this case was made on the security of rents to become due, some eighteen months or two years after the notarial assignment. The transfer was made and duly served on the tenant, who thereupon became bound to pay the bank on the different dates of maturity, which were the first of February, May, August and November, 1906, and the first of February, 1907. So long as the proprietor remained solvent and capable of meeting his ordinary liabilities there would be no trouble. But unfortunately he was unable to pay the interest on the mortagage, which he had previously placed on the property, and the mortgagee accordingly took judgment, seized and advertised the property for sale. To protect itself the bank put in an opposition, alleging that the property should not be sold, unless subject to the payment of the rents that had been previously transferred to it. The mortgagee contested, on the ground that such an advance was *ultra vires* of the bank, and in any event the revenues became immobilised, that is attached to and part of the realty, from the moment of seizure, and that accordingly the transfer of rents was subject to the mortgage, and further could not be continued after a sheriff's sale. The court did not discuss the question of *ultra vires*, it was not in fact very seriously argued, and the bank was confirmed in its title to the rents, which it accordingly collected even after the sheriff's sale.

There was, however, this obligation imposed on the bank, that it should give security to the amount of the rents so transferred that the property would be sold for enough to pay the mortgagee in full.

Realization of Securities:

It may happen that the bank will find itself under the necessity of resorting to the securities deposited with it as collateral to recoup itself the monies advanced. The method to be adopted must depend on the nature of the securities and the capacity in which the bank holds them.

> Section 66.—"The stock, bonds debentures or securities, acquired and held by the bank as collateral security, may, in the case of default to pay the debt, for securing which they were so acquired and held,be dealt with, sold and conveyed either in like manner and subject to the same restrictions as are herein provided in respect of stock of the bank, on which it has acquired a lien under this Act, or in like manner as and subject to the restrictions under which a private individual might in like circumstances deal with, sell, and convey the same, but without obligation to sell the same within twelve months."

The reference to the sale of stock is found in the preceding section—which provides that the bank has a lien on any stock held by its debtor, and may decline to allow its transfer until the debt is paid. It may sell such shares within twelve months from the maturity of the debt after thirty days' notice to the debtor, which should indicate the time and place of the sale. If the bank does not exercise the right of sale under this section within twelve months after maturity of the debt, it would then need to fall back upon the remedy that might be given it by the law of the particular Province where its head office is situate. In most Provinces it would be obliged to take judgment and sell the shares under execution, when it would be paid by preference out of the proceeds.

The remedy on bills, notes or cheques held either under the bankers' lien, or under direct pledge as collateral security is easy and practically automatic, the person having the lien or the pledge being in the position of holder for value and entitled to sue thereon in his own name.

With regard to any securities held by the bank as collateral, that mature before the debt to which they are collateral, the bank has a right to collect them and apply them in payment of the debt. So the section we have just read has reference to bonds or debentures that do not mature until after the debt, and to stock and other similar securities.

The bank is bound to use due diligence and prudence in realizing on these securities. It may either proceed as is prescribed for its own shares, that is, sale within twelve months on notice to the debtor, or it may avail itself of the law of the Province as to the disposal of articles held in pledge.

Unless there be an agreement to that effect the bank does not acquire a title to the collateral securities on the default to pay the debt. If the collateral be a security for a sum of money the bank may collect it when due; if it be stock or a security for the payment of money it may take steps to have it sold.

In the Province of Quebec in the absence of special agreement, the bank must needs obtain judgment, and then seize and sell in the ordinary way, when it would be paid by privilege out of the proceeds.

This is in virtue of C.C. 1971—"Saving pawnbrokers, no creditor can, in default of payment of the debt, dispose of the thing given in pawn. He may cause it to be seized and sold in the usual course of law under the authority of a competent court and obtain payment by preference out of the proceeds." This of course does not apply to goods and merchandise given in security under the provisions of a later section of the Act.

> *Section* 66. *s.* 2.—"The right so to deal with and dispose of such stock, bonds, debentures or securities in manner aforesaid may be waived or varied by any agreement between the bank and the owner of such stock, etc., made at the time at which the debt was incurred, or if the time of payment of such debt has been extended, then by agreement at the time of such extension."

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LECTURE VI.

The Collecting Banker.

In addition to the right to issue notes for circulation, and to receive deposits given in other sections, and in addition to the special powers as a bank of discount enumerated in the earlier part of section 64, a bank is authorised to "engage in and carry on such business generally as appertains to the business of banking." This is, of course, subject to the limitations and restrictions contained in the Act.

A bank, like any other corporation, has the right to do such acts and to enter into such contracts as may be necessary to enable it to carry out the object of its incorporation, or to exercise the powers that are either expressly or by implication conferred upon it by the Act. It has power to acquire real estate for its own use, and to dispose of the same; and it may acquire and dispose of under certain circumstances, stock, lands and merchandise in which it may not traffic, but which come into its possession indirectly through its authorised dealings.

A branch of general banking business not specified in the Act is the collection of bills and other negotiable instruments for its customers. The bank presents them for payment, and if paid places the amount—less its charge for collection—to the credit of the customer.

In the discharge of this function of its business the bank acts as its customers' agent, and as such it is bound to use reasonable skill, care, and diligence in presenting and securing payment of drafts, notes or cheques entrusted to it for collection, and placing the proceeds to its customers' account, or in taking such steps as may be proper to secure the customers' interests.

The bank's duty in any particular instance will depend upon all the facts of the case, and the usages of business with regard thereto.

Thus, if it is employed to obtain the acceptance of a bill, it may be justified by considerations of prudence and the interest of its customer in not pressing for an acceptance in such a way as to lead to a refusal, providing it takes the proper steps at the right time to protect its customers' right.

This was held in an arbitration case (Bank of Van Diemans' Land *vs* Bk. of Victoria—L.R. 3 P.C. 526.) One bank sent to another for collection a draft which was received by the collecting bank Friday afternoon and at once presented for payment. It was left with the drawees, and called for the following morning, when the clerk was asked to call again on Monday. The bill was accepted on Saturday, but the drawees becoming suspicious cancelled their acceptance on Monday and returned the draft unaccepted. The drawer becoming insolvent the endorsing bank sued the collecting bank, because it had not insisted on a return of the bill on Saturday. The proof established that by custom in Melbourne, Saturday was a short day and that the collecting bank was not guilty of negligence in leaving the bill until Monday, for had they insisted on its return at once, the drawee might have refused to accept, and therefore the exercise of discretion was justified.

If, however, the bank is dilatory in endeavouring to procure acceptance or payment, or in giving notice of dishonour, or is otherwise negligent in the matter, and its customer suffers damage in consequence, it will be liable to make it good.

Property in Documents Pending Collection.

We have seen that when bills are discounted they become the property of the bank, and the risk of ownership passes from the customer to the bank; but when deposited as collateral the property remains vested in the customer who alone must suffer any loss, unless due to the bank's negligence.

Like collateral, a bill remitted to a banker for collection. and not discounted or treated as cash by agreement or according to the course of business between the bank and its customer, remains the property and continues in the legal possession of the customer. If by accident it is destroyed, without the default of the bank the loss would fall upon the customer.

So it has been held that when a bank receives a note for collection and in the regular course of business places the same in the hands of a responsible and solvent agent, it is not liable for the loss of the note in the mails. In any case the offer of the bank to give security to the makers and endorser that they would never be troubled if they paid the note, was sufficient. (Litman vs M.C. & D.S. Bk. 13 S. 262.)

In that case the note was lost after dishonour and protest, and one can readily understand the plaintiff's eagerness to hold the bank liable for the loss, and his refusal to accept its guarantee that he would never be troubled. The responsible and solvent agent chosen by the defendant bank, was no less an institution than the Bank of Montreal, so it was naturally held that the collecting bank was not guilty of any negligence.

Treating As Cash.

When by agreement or general course of business a customer is credited with and allowed to draw against bills deposited for collection, the transaction is really a discount and the property would pass to the bank. The question of treating cheques deposited for collection as cash, was exhaustively discussed in a recent case before the Privy Council (Gordon *vs* Capital Counties Bk.) There the question was the right of the bank to claim the protection afforded by the English Bills of Exchange Act when crossed cheques are paid to a person having a defective title, and it was held that if a banker credit the customers' account with cheques as cash before they are cleared, or the money received for them, the mere fact of his doing so, altogether apart from the state of the account, makes him holder for value of those cheques and precludes him from the plea that he was only receiving payment for the customer, and consequently the protection of the section.

The same reasoning would seem to apply to uncrossed cheques, which therefore if credited as cash, become the property and are at the risk of the bank.

But such an agreement or course of business will not be presumed, and ordinarily bills endorsed to a bank for collection, even though the customer be allowed to draw against them he will retain the property.

While this would be in the interest of the bank in the case of the loss of a bill, it would be much more important for the customer in the event of the banks' insolvency—a contingency that fortunately we are not often called upon to face—for bills in the hands of a banker for collection do not pass to his trustee in bankruptcy or liquidator, for by the course of business bankers must have the goods of other people in their possession and accordingly a false credit is not thereby held out to the world.

A customer who was in the habit of endorsing to his bankers bills not due, which if approved were immediately entered to his credit for the full amount when he was at liberty to draw for that amount by cheques, was allowed to recover the bills from the bankers' assignee, the cash balance independently of the bills being in his favour at the time of bankruptcy.

It was argued that there was an implied agreement that as soon as the bills reached the banker the property should be changed. But the Court held that such a contract should not be lightly inferred.

Though not the owner of bills handed in for collection, the bank, however, enjoys full rights of enforcing payment against all parties but the customer, for under s. 38 of the Bills of Exchange Act, the holder of a bill may sue on it in his own name.

The "holder" of a bill as defined by that Act is the payee or endorsee who is in possession of it or the bearer of it; and the holder need not be the owner. But if the holder be not the owner—and this would apply to the collecting bank, any defence that could be set up against the real owner is available against him.

The Duties of Collecting Bank:

1. With regard to cheques:

A bank to which a cheque is delivered for collection is under an obligation to its customer to use all reasonable diligence in presenting it for payment. If loss is sustained by the customer in consequence of the bank's omission to use such diligence the latter will be liable.

It is clear, then, that in the absence of some special reason to the contrary, a bank will be bound to present the cheques within the time allowed by law as between the customer and the drawer or any endorser. But its duty as agent may require it to present it even more speedily. Accordingly, although the time which is reasonable as between the payee and the drawer is in general a sufficient guide to the obligation of the bank, it does not necessarily determine it. What is reasonable on the part of the bank as its customers' agent must, in the last resort, be a question of fact.

> *Bills of Exchange Act* 73. Subject to the provisions of this Act:—
>
> (*a*) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;
>
> (*b*) In determining what is a reasonable time, regard shall be had to the nature of the instrument the usage of trade and of banks and of the facts of the particular case;
>
> (*c*) The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it.

This is subject to the provisions of the Act relating to excuses for non-presentment and delay in presentment which are found in Section 46.

> S. 46. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his fault, misconduct or negligence: when the cause of delay ceases to operate, presentment must be made with reasonable diligence.

2. *Presentment for Payment is Dispensed With*:—

(*a*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b*) Where the drawee is a fictitious person;

(*c*) As regards the drawer, where the drawee or acceptor is not bound as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d*) As regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented;

(*e*) By waiver of presentment, express or implied, section 73 does not change the rule with regard to endorsers but the drawer is discharged only when he actually suffers damage by the delay.

This section is new law for England and the other Provinces. At common law the mere omission to present a cheque for payment did not discharge the drawer, until, at any rate six years had elapsed, and in this respect the common law appears to be unaltered. But if a cheque was not presented within a reasonable time, and the drawer suffered actual damage by the delay, for example, by the failure of the bank, the drawer was absolutely discharged. Our Civil Code had the same rule before the Bills of Exchange Act,—Article 2352—"If the cheque be not presented for payment within a reasonable time, and the bank fail between the delivery of the cheque and such presentment, the drawer or endorser will be discharged to the extent of the loss he suffers thereby."

As to what is a reasonable time our jurisprudence has laid down a series of rules that are doubtless familiar to you, but which it may be well to recite.

If the person who receives the cheque, and the bank on which it is drawn are in the same place, the cheque must, in the absence of special circumstances be presented for payment on the day after it is received.

If the person who receives a cheque and the bank on which it is drawn are in different places, the cheque must in the absence of special circumstances be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must in like manner, present it and forward it on the day after he receives it.

In computing time, non-business days must be excluded; and when a cheque is crossed any delay caused by presenting the cheque pursuant to the crossing is excused.

There is a case on this question of delay, concerning the liability of the drawer, and not that of the bank, which is however, interesting and instructive.

One Campbell gave Dorion his cheque on a bank at Lachute to take up a note which had matured.

The cheque was payable to D or bearer. D without retiring the note, got the cheque cashed by Riendeau, deposited the same in a bank at Montreal. Campbell having discovered that he had been deceived by D stopped payment of the cheque and the bank at Lachute having refused payment, it was subsequently protested and returned to R. The presentment of the cheque was made on the eighth day after the issue. Riendeau took action against Campbell on the cheque, and it was held that under the circumstances the presentment was within a reasonable time, in accordance with the usage of trade and banks, and R being a holder in due course was entitled to recover.

A cheque is deemed to be stale or overdue when it appears on the face to have been in circulation for an unreasonable time and a bank is not justified in paying such a cheque without enquiry.

The Bills of Exchange Act, s. 74, says further that the duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by:

(a) Countermand of payment.

(b) Notice of the customers' death.

As for the countermand it must be given before the cheque has been accepted.

The customer, when he has delivered a cheque on a condition which he learns is to be broken or eluded, has a right to stop payment. But if as in the case just cited of Campbell *vs* Riendeau the cheque has been negotiated, the drawer will nevertheless be liable to the holder in due course, although the bank would not be justified in paying.

It has also been held that a bank is not bound to honour a customer's cheque after a garnishee order is served on it even although the balance exceed the judgment.

The banks' authority and duty to pay is not terminated until it has received notice of its customers' death, therefore payment after death but before notice is valid.

It has been held in England that after the death of a partner, the surviving partner may draw cheques upon the partnership account. But in this Province the death of a partner terminates the partnership, and also the right of the survivors to act for the firm, in the absence of special agreement to the contrary.

We shall postpone the consideration of the notice of dishonour of cheques, until we come to discuss the dishonour of bills, as the notice to be given in each case is the same.

2. *With Regard to Drafts and Notes.*

Following its general duties as an agent of its customer the bank is first of all under the obligation of using all reasonable diligence to secure acceptance of bills and payment of bills and other securities remitted to it for collection. It is bound to do, not only what is legally imperative upon a holder, but also what is prudent in the interests of its customer.

The Obligation to Present—Bills of Exchange Act §39:

> "Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
>
> 2. "Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.
>
> 3. "In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
>
> 4. "Where the holder of a bill drawn payable elsewhere than the place of business or residence of the drawee, has not time, with the exercise of reasonable dili-

gence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer or endorsers."

The acceptance of a bill payable at or after sight should be dated, so that it may be shown from what day the time runs. A sight bill is payable three days after acceptance, one payable after sight on the third day after the expiration of the time mentioned in the bill.

A bill should be presented for acceptance to the drawee personally, or at his place of business or residence; or to his authorised agent. If it is addressed to him, it may be treated as dishonoured if he has absconded; but if he has merely changed his residence or place of business, or if the bill is not addressed to him at a particular place it is incumbent on the holder to use due diligence to find him.

"It is in all cases advisable for the holder of an unaccepted bill to present it for acceptance without delay; for, in case of acceptance the holder obtains the additional security of the acceptor, and, if acceptance be refused, the antecedent parties become liable immediately. It is advisable too on account of the drawer for by receiving early advice of dishonour, he may be better able to get his effects out of the drawee's hands." (Byles on Bills.)

Time for Presentment:

"The bill," said Trudel, C. J., in Meelish *vs.* Rawdon (9 Bay 416) "must be forwarded within a reasonable time under all circumstances of the case, and there must be no unreasonable or improper delay. Whether there has been, in any particular case, reasonable diligence used, or whether unreasonable delay has occurred, is a mixed question of law and fact, to be decided by the jury acting under the direction of the judge."

The Bills of Exchange Act lays down the same rule here. The reason for it is that the drawer and prior endorsers, if any, have a right to expect that they shall not be prejudiced by undue delay, as they have an interest in knowing at an early date whether the drawee will accept, and also in case he accepts, that the date of payment shall not be unduly postponed, thus extending the period of their liability and increasing the risk of their losing through the failure of the acceptor.

Should the bank fail in this regard the drawer and all prior endorsers are discharged.

How greatly the circumstances may alter cases may be seen from two examples.

A bill drawn in Toronto on August 6th by a party dealing in bills, on New York, payable at sight, in favour of a party living in Illinois to be sent there as a remittance and for circulation, which passed through a number of hands, was presented in New York on November 10th.

The jury found the delay not unreasonable. (Boyer *vs.* Joseph 7 A.C.Q.B. 505.)

Again, a bill of exchange was drawn on the 27th August, and after passing through the hands of two intermediate holders was presented on the 1st September, and acceptance refused and protested on September 8th,—all the parties being in Montreal. The holder sued the last endorser. Held that presentation and protest had not been made with due diligence, and the action was dismissed. (Harris *vs* Schwob 3 R.L. 453.)

The rules for presentment are set out in the Bills of Exchange Act and need not be repeated here.

Examples of Presentment for Payment:

A note payable generally was left for collection at a bank in the town where the maker lived. Before it matured he left town. A clerk went to present it at the house where he formerly lived, and could not learn where he had gone to. He had heard before the note matured that the maker had left town, but heard different reports as to where he had gone. No enquiry was made at any of the places. It was proved that his leaving was no secret, and his business partner was not asked as to his whereabouts. Held, that reasonable diligence was not used and the endorser was released. (Brown *vs* Boulton 9 A. C., Q.B. 64.)

Where, however, it was shown that a merchant had absconded a presentment at his late dwelling house was sufficient, without proof of presentment at his store or that the store remained closed on the day the note fell due.

3.—*Notice of dishonour.*

The bank is obliged to give notice of non-acceptance at once, and the omission to give such notice will not be cured by giving notice of non-acceptance with the notice of non-payment. But the omission will not prejudice the rights of a subsequent holder in due course, that is one who took the bill without being aware that it had been dishonoured by non-acceptance.

A bank holding a note for collection may properly protest a note and send out notice of dishonour although it has no interest itself in the note.

Our Courts have frequently been called upon to decide on questions of sufficiency of notice, and the reports disclose a variety of forms that have been held to be valid.

Even so ungallant a notice as one in which a lady was addressed as "Sir" was sufficient to confirm her liability; and still more strange a notice through the post-office, was held to be sufficient to bind a deceased person. There was I presume a presumption in favour of the post-office authorities, that they always carry out their commissions, and as the addressee could not in that case be called upon to swear that he had not received the notice, it was presumed that the letter reached him and his estate was held.

But a man cutting wood in the endorsers' yard, was held to be not necessarily a member of his family, and a notice to him was not sufficient.

But these rules scarcely require any illustration, and if a bank observes them carefully, and uses due diligence, such as might be expected of a prudent man, it will run into little danger of loss for failure of notice.

Inland bills may but need not be protested except in the Province of Quebec, and you, gentlemen, are probably thoroughly conversant with the bank's duty in this connection.

Where a bill is payable in this Province, although the endorser resides in Ontario, and made the endorsement there, it has been held that the laws applicable here govern the sufficiency or insufficiency of notice of dishonour.

The protest is of course distinct from and more formal than notice, and in this Province must be effected by the Bank's notary.

An Inland Bill as defined by the Act is one both drawn and payable within Canada, or drawn within Canada upon some person resident therein, although it may be payable abroad.

A foreign bill, that is, any bill that does not come within the foregoing definition, when dishonoured in any part of Canada by non-acceptance or non-payment must be protested.

The Bank Act is the Charter of Banks, and we may style the Bills of Exchange Act a part of its by laws, containing the rules governing all its dealings with bills, notes and cheques. Therefore in acting as collecting agents the officers of the bank should be familiar with all its provisions, especially with these important regulations that govern presentments and notices.

LECTURE VII.

Advances on Warehouses Receipts and Bills of Lading:

We have so far considered the general powers of banks, as given by section 64, and we must now consider those clauses of the section that restrict the business of banking.

> "But," continues Section 64, "Except as authorised by this Act, the bank shall not, either directly or indirectly deal in the buying, or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever."

The general rule is therefore that a bank cannot in any way deal with goods, wares and merchandise, except in strict conformity with the sections that specially authorise a particular form of business. As an exception is thus made, in the interests of the general welfare of business, it is encumbent on the bank to see that the exact terms and conditions are followed; for it is a rule of law that an exception must be strictly interpreted, the slightest deviation from the prescribed procedure will invalidate the whole. The bank's right to deal in goods, wares and merchandise is set forth in sections 73 to 78 inclusive, and these must now receive a careful consideration.

Section 73.—"Warehouse Receipts as Collaterals.

"The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favour (or as security for any liability incurred by it for any person) in the course of its banking business; and the warehouse receipt or bill of lading so required shall vest in the bank, from the date of the acquisition thereof, all the right and title of the previous holder or owner thereof, or of the person from whom such goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt of bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of such goods, wares and merchandise."

Before we can proceed to the discussion of the rules that the bank must follow in making advances on these securities, we must first of all by defining our terms, lay a sure and firm foundation on which to base our reasoning. Without a clear understanding of the nature of these documents, as they are called "documents of title to goods," it will be impossible to appreciate the rules that are laid down, and without that understanding and appreciation, no one can hope to apply those rules in actual practice.

The Act defines a Warehouse Receipt as "any receipt given by any person for any goods, wares, or merchandise, in his actual, visible and continued possession, as bailee thereof in good faith and not as his own property, and includes receipts given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods, wares and merchandise, for goods, wares and merchandise delivered to him as bailee and actually in the place, or in one or more of the places owned or kept by him whether such person is engaged in other business or not."

As this definition was restrictively interpreted, it was held that it did not include a receipt for logs lying in a certain lake on the way from the woods to the mill, as not being a place kept by the signers of the receipt. This deficiency seriously embarrassed one of the most important of our industries, that of lumbering, accordingly in 1900 the Act was amended, so that the expression Warehouse Receipt now "includes receipts given by any person in charge of logs or timber in transit from timber limits, or other lands, to their place of destination."

The Act (s. 2.c) further declares that in addition to the things usually understood thereby, that is those goods that are the common objects of mercantile transactions, the expression includes, timber, deals, boards, staves, saw-logs, and other lumber, petroleum, crude oil, and all agricultural produce and other articles of commerce.

The definition is very extensive, and it is hard to imagine any articles that may not validly be the object of a warehouse receipt. But it must be an article of commerce, and so it has been held that fixtures are not included, though one may hazard the opinion that for those who deal in them fixtures might be the object of a good warehouse receipt.

The definition includes timber and growing crops, because the clear intention being that they shall be severed, they are taken as by a fiction of law as being actually severed.

But shares in a company are not within the expression, nor are bonds or certificates of stocks.

These subtle distinctions will, however, seldom arise to puzzle the banker, and if he confines his dealing with warehouse receipts to such articles as are generally and in common business language known as goods, wares and merchandise, he will run little danger of finding a valueless security on his hands. Good business judgment is the asset of every successful banker, and that with sound common sense is often of infinitely greater value than the greatest facility in drawing fine distinctions, or discovering original analogies.

A warehouse receipt is then a receipt for goods, wares and merchandise given in one of three ways, or by three classes of persons.

1. Any bona fide bailee of goods which are in his actual, visible and continuous possession; and

2. Any person who is the keeper of a warehouse or other place for goods in respect of goods being in that warehouse or place; and

3. Any person in charge of logs or timber in transit.

It would seem that the first class of persons would include the other two, for although the opinion has been entertained by some able jurists that a warehouseman need not prove that he was actually, visibly and continuously in possession of the goods, they must be in his warehouse, and if in his warehouse he could scarcely be other than the bailee in actual possession of them.

In any event it has been held in this Province that a warehouse receipt given by a warehouseman for goods not in his possession was null and void (Williamson *vs* Rhind 22 L.C.J. 166.)

It has also been held that when a bank held a warehouse receipt signed by the clerk of a warehouseman, and endorsed by the latter, the receipt was invalid as the clerk was not a warehouseman, and the bank was not entitled to recover on an insurance policy assigned to it by the warehouseman. But though the warehouseman must be a bailee, that is, must have the goods in his possession for some one else, it is not necessary that the bailee should be a warehouseman, therefore for the purpose of issuing a warehouse receipt goods, wares and merchandise may be specially deposited with any person, provided he be capable of contracting.

It is the custom, I believe of banks to take advantage of this new definition of a warehouse receipt, by making advances to merchants on the security of a receipt issued by a clerk. Under the law as it originally stood when a warehouse receipt could be issued by no one but a warehouseman, it was not permissable for a merchant to place certain goods in the care of his book-keeper and obtain advances on his receipts: but now I may venture the opinion that such a receipt would be valid provided the book-keeper or clerk be in bona fide actual possession of the goods, for instance, if they be set aside in a part of his employers' warehouse, or in another warehouse where he will have actual control over them.

It is essential in every case that the transaction be in good faith. and that the person so entrusted with the goods have the actual possession of them, in order that he may issue a valid receipt.

A warehouseman's receipt has been defined to be "a written simple contract between the owner of the goods and the warehouseman, the latter to store the goods and the former to pay the compensation." Unless the statutes require a particular form for warehouse receipts, it is not necessary that they should have any special form to operate as such, but it is essential to their validity, however, informal they may be, that they show that the goods are held for storage. A receipt which fails to comply with the requirement that it shall designate the property by distinguishing marks, is not sufficient, and the trade-mark of the firm is not a compliance with the statute unless there are no other articles in the warehouse with the same trade-mark.

In Ontario the legislation regarding warehouse receipts and bills of lading is found in "The Mercantile Amendment Act" (R.S.O. c. 145); and in Quebec in Arts, 5643-5650—of the Revised Statutes. The foundation of both these Acts was the Consolidated Statutes of Canada, which provided that such documents should be transferable by endorsement. In Ontario there has been subsequent legislation which is embodied in the Merchantile Amendment Act; but in Quebec the law in force in the former Province of Canada at Confederation remains unchanged.

In neither of these Statutes is there any special form of receipt prescribed, therefore any form that sufficiently identifies the goods and discloses the position of the bailee and the place where the goods are held will be gold.

Mr. Lash points out that bankers should be careful to avoid describing goods as "so many feet of lumber" or "so many bushels of wheat,"—"so many sides of bacon," etc., unless such description can be followed by such particulars as will identify the things described and enable a person, by the aid of such enquiries as the instrument itself suggests, to identify the property covered. If the intention is to cover all the lumber or wheat or bacon in a particular place, the description should say so, and the words "estimated to be about so many feet" etc., might be added. The following cases are instructive. (Bk of B.N.A. *vs* Clarkson 19 A.C.C.P. 182.)

Miller & Co. being indebted to the bank on certain overdue notes, it was agreed that the plaintiffs should discount a further note for them, with the proceeds of which it was understood the overdue paper should be retired; that M. & Co. should hand over to plaintiffs certain warehouse receipts for wool stored in their warehouse, as collateral security. This note was accordingly discounted by plaintiffs and the old notes duly retired, an agreement being signed by M. & Co. at the time of the discount that they had endorsed over the receipts as collateral for the note. The receipts were in the same form as follows:—

> "Received in store in our warehouse at......from sundry parties 17,900 pounds batting to be delivered pursuant to the order of the Bk of B.N.A. to be endorsed hereon. The said batting is separate from and will be kept separate and distinguishable from other batting."

It was objected that these receipts were not in compliance with the statutes. "It may be assumed," said the Judge, that in passing the Acts dealing with warehouse receipts the Legislature at first contemplated the case of parties storing goods in a general warehouse and taking the receipt of its keeper therefor and that a certain commercial value should be impressed on these receipts enabling the holders to obtain credit and raise money upon them a matter naturally of vast importance. Such receipts might be readily transferable to secure repayment of advances made, the security being enhanced by the statutable declaration that the endorsement by the owner of the goods should vest in the person making the advance all the endorser's title to the goods."

These receipts do not profess to be ordinary receipts from parties storing goods, and whose property the goods are declared to be. The goods are spoken of as being received from "Sundry Parties" and are to be delivered pursuant to the order of the Bank of B.N.A. The substance of the receipt was then merely a certificate or acknowledgment by Miller & Co. to the warehouseman that certain goods are in their warehouse subject to plaintiff's order.

It does not even appear from the receipts that Miller & Co. were the owners as well as warehousemen, in which event under the law as it then stood, an advance might be made.

The only ground on which the Court thought that it might have recognised the bank's claim, was on the contention that receipts may be given directly to and in favour of the bank or person making the advance. This can of course now be done, though the document must in all respects conform to the definition of a warehouse receipt.

(Todd vs. Liverpool & L. & G. Ins. Co: 20 U.C.C. P. 523.)

A warehouseman insured certain wheat with the Defts. Co. and assigned the policy to a bank, to whom he gave a warehouse receipt signed by his clerk and endorsed by himself. In an action on the policy, on behalf of the bank, held:—that the bank had no insurable interest as the clerk was not a warehouseman, and that the receipt was not in compliance with the Statute not being signed by the warehouseman.

The elements then that must be found in every warehouse receipt are three:

1. It must be given by a bona fide bailee.
2. It must disclose the owner, although it may be given directly to the bank.
3. It must describe the goods with such accuracy that they can be readily identified.

We have now seen what is essential to constitute a valid warehouse receipt, and we may pass on to the consideration of the effect of such an instrument with regard to the possession of or property in the goods to which it refers.

Title of Pledgee:

The passing of a warehouse receipt into the hands of an innocent holder for value, prior to notice of an adverse claim to the goods, constitutes the pledgee a bona fide purchaser who acquires a good title, although the pledgor was insolvent when the goods were purchased and failed to pay for them, and although they were obtained from the owner by fraud, and when the owner puts it in the power of another to pledge the goods or receipt for them to a bona fide purchaser, the latter takes a good title, and the owner cannot recover.

But if the pledgee takes with notice of equities, he acquires only such interest as the pledgor may have.

Negotiability:

There is some confusion in the cases as to the effect of the transfer of a warehouse receipt, which is sometimes spoken of as negotiable, or again more accurately as *quasi-negotiable,* but all the cases sustain the proposition that in the absence of statute it stands for the property represented therein, or its transfer operates as a constructive delivery having the same effect as it the property itself had been delivered, and the warehousman becomes the bailee of the holder. This is especially true where notice has been given the warehouseman of the transfer and the legal effect is not impaired by a recital with the depositors who have a lien thereon for the full cost of the same.

When delivery is restricted to the bailor personally by the terms of the receipt, the transfer of the receipt does not pass a good title without his consent nor as against an attacking creditor prior to notice of the transfer to the warehouseman.

The bank should see therefore that the receipt is unrestricted.

When a warehouse receipt contains all these essentials when it is given by a bona fide bailee, when it sufficiently identifies the goods, and is unrestricted, its acquisition will vest in the bank all the right and title of the previous holder or owner thereof or of the person from whom the goods wares and merchandise were acquired.

The Act places bills of lading in the same category as warehouse receipts, and before considering when and how advances may be made, we must discuss the nature and effect of this important document.

A Bill of Lading is defined as a memorandum signed by Masters of ships in their capacity of carriers acknowledging the receipt of merchants' goods—of which there are usually three parts—one kept by the consignor, one sent to the consignee and one preserved by the master. It is the evidence of the title to the goods shipped; and by its endorsement and delivery the transfer of the property in the goods therein specified, is generally effected. (Sanders vs. McLean. 11. Q. B. O. 377.)

Nature of Bill of Lading:

"The Law" said L. J. Bowen, "as to the endorsement of Bills of Lading is as clear as, in my opinion, the practice of all European merchants is thoroughly understood. A cargo while at sea in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading by the law merchant is universally recognised as its symbol, and the endorsement and delivery of the bill of lading operate as a symbolical delivery of the cargo. Property in the goods passes by such endorsement and delivery of the bill of lading, whenever it is the intention of the parties that the property should pass, just as under similar circumstances, the property would pass by actual delivery of the goods. And for the purposes of passing such property in the goods and completing the title of the endorsee the full possession thereof the bill of lading, until complete delivery of the cargo has been made on shore to some one rightly claiming under it, remains in force as the symbol, and carries with it not only the full ownership of the goods, but also all right created by the contract of carriage between the shipper and the ship owners. It is the key which in the hands of the rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be. The above effect and power belong to any one of the set of original bills of lading, which is first dealt with by the shipper. Except in furtherance of the title so created of the endorsee, the other originals of the set are, as against it, perfectly ineffectual and have no efficacy whatever, unless they are fraudulently used for the purposes of deceit."

Transfer of One of a Set:

When goods are shipped under a bill of lading drawn in parts, to be delivered to the consignee, "or his assigns, the one of which bills being accomplished, the others to stand void," the master, or the warehouseman who has the custody of the goods under the Merchants Shipping Act, is justified in delivering to the consignee on production of one part, although there has been a prior endorsement for value to the holder of another part; provided that the delivery be bona fide without notice or knowledge of such prior endorsement.

Gosselin *vs* Ontario Bank. 36 S.C.R. p. 406. The absence of the endorsement on bills of lading by the consignee therein named is notice of an outstanding interest in the goods represented by the bills, and places persons proposing to make advances upon the security of those bills upon enquiry in respect to the circumstances affecting them. On failure to take proper measures in order to ascertain these facts and obtain a clear title to the bills and goods, any pledge thereof must be assumed to have been made subject to all rights of such consignee.

Held: per C. J. Taschereau dissenting:—"Where a sale of goods has been completed by actual tradition and delivery the mere absence of the consignee's endorsement upon shipping bills representing the goods, made in the name of the vendors cannot have the effect of reserving any right of property in the vendor. If the goods have been sold upon terms of credit, the unpaid vendor has no right to revendicate such goods after they have passed into the possession of a third person in the ordinary course of business, and, in the present case, on failure of the conservatory seizure and in the absence of any right of the plaintiff to revendicate the goods, the alternative relief prayed for by his action should not be granted.

The facts of this case were as follows:—

The plaintiff sued for the recovery of 5324 bales of hay and 54 Bills of Lading issued by several railway companies of the value in all of $5,244.50. He held that he had agreed to sell hay to the firm of Marsan & Brosseau at $8.50 a ton, that there were in all 54 cars of the value of $5,244.50. That Marsan & Brosseau illegally transferred the Bills of Lading to the Ontario Bank without the plaintiff's endorsement or without payment of the hay, and that Marsan & Brosseau were insolvent at the time of the transfer of the said Bills of Lading to the knowledge of the bank. There was no pretension that the Bills of Lading were ever endorsed by any one. It appears from the evidence that the hay in question was to be shipped to England to be sold and that the railway receipts or Inland Bills of Lading were to be exchanged for Ocean Bills of Lading to Marsan & Brosseau or their agents, and sold in England also through the same agents; that the plaintiff's name was entered on the railway receipts as shipper or consignee for the purpose of retaining the control over the hay and of retaining the ownership thereof until paid, the plaintiff expecting the Ocean Bills to be made to his order as shipper and consignee. Marsan & Brosseau, however, on receiving the railway receipts from the plaintiff forwarded to him Bills of Exchange at thirty days, some of which Bills of Exchange the plaintiff discounted at his bank, the others he returned to Marsan & Brosseau after they became bankrupt, the bank made advances to Marsan & Brosseau upon the railway receipts without the personal endorsement of Gosselin, and upon the sole endorsement of Marsan. It was held in the Superior Court that all the advances made on the 9th were made on the shipping bills or railway receipts, although the manager of the bank declared that 26 cars had been pledged to the bank by Marsan & Brosseau upon Ocean Bills obtained by them in their favour and endorsed by them. The Supreme Court, however, after fully discussing whether the advances made by the bank to Marsan & Brosseau of these 20 or 26 cars, were made originally upon the endorsed bills or made in good faith in the ordinary course of business to Marsan & Brosseau upon Bills of Lading to themselves and endorsed to the bank, expressed the opinion that the advances were made in good faith upon the Ocean Bills of Lading, and that, therefore, the bank was not liable to the plaintiff for the 20 cars. The railway companies since they exchanged the shipping receipts for Ocean Bills of Lading without Gosselin's endorsation, evidently thought that Marsan & Brosseau had full power to deal with them, but the bank learned to its cost that the absence of that endorsation was a fatal defect. The Supreme Court hinted that there might have been an action against the railways for the 20 cars, the shipping receipts for which they had exchanged; but the bank was entitled to hold them, the advances having been made on Ocean Bills in Marsan & Brosseau's name. Superior Court gave judgment for whole 54 cars —$4,934.44.

The Court of Appeals, held that as to the hay in 26 cars the advances were made on Ocean Bills obtained by Marsan & Brosseau, and that if any one was liable to the plaintiff it would be the railways that exchanged the shipping receipts without his endorsement.

The Supreme Court found that the advances on 20 cars only were validly made by the bank, and finally condemned it in the sum of $3,104.43.

Where, then, a bill of lading is endorsed to a bank as security for money advanced the transaction is generally in effect a pledge, though, according to English authors it may be a mortgage if the parties so intend. Whether it is one or the other does not affect the substance of the rights of the parties. The pledgee will have the right to obtain delivery of the goods and upon default by the borrower to realize on them. If it is the intention of the parties, but not otherwise, the endorsement of the Bills of Lading will pass the absolute property in the goods represented by it.

However, a bank is not liable in damages for not giving notice of the arrival of the goods to a customer to whom it has endorsed a bill of lading even when it has received such notice. The customer should ascertain by what vessel the goods are coming or notify the agent of the marks on the goods and ask that he be informed of their arrival.

The mere endorsement and delivery of a bill of lading by way of pledge for a loan does not pass the property in the goods to the endorsee so as to transfer to him all liabilities in respect of the goods, for instance so as to make the endorsee liable for freight.

This was held in an English case (Sewell *vs* Bardick 10 A. C. 74) where an advance had been made on bills of lading of goods shipped to a foreign port. As a matter of fact the lender never took possession of the goods and had not derived any benefit from the bill of lading for the Russian Government, the goods having been consigned to a port on the Black Sea, sold the goods for barely enough to pay the customs charges. Had the lender really taken possession of the goods it is probable that the claim for freight would take precedence of his claim for the advance.

The bank having acquired a bill of lading as collateral security, may re-deliver it to the pledgor for a limited purpose, for example, to sell the goods and hand over the proceeds towards satisfaction of the debt, without thereby losing its rights.

Section 73. *s.* 2. "Previous holder an agent: If the previous holder of such warehouse receipt on bill of lading is the agent of the owner of the goods, wares and merchandise mentioned therein, the bank shall be vested with all the right and title of the owner thereof, subject to his right to have the same re-transferred to him, if the debt or liability, as security for which they are held by the bank, is paid.

S. 3. "In this section the expression "Agent" means (1) any person entrusted with the possession of the goods wares and merchandise, or (2) to whom the same are consigned, or, (3) who is possessed of any bill of lading, receipt, order, or other document used in the course of business as proof of the possession or control of goods, wares and merchandise, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of such document to transfer or receive the goods, wares or merchandise thereby represented; and such person shall be deemed the possessor of such goods, wares and merchandise, bill of lading, receipt, order or other document as aforesaid, as well, if the same are held by any person for him or subject to his control as if he is in actual possession thereof."

An agent may be the holder of a warehouse receipt or bill of lading either as being the person named in the receipt or bill or the person from whom the goods were received, or to whose order they were subject, or as endorsee, or as the holder of a receipt or bill transferable by delivery. Such an agent may transfer to a bank a warehouse receipt or bill of lading under the circumstances that we are about to discuss, and the bank becomes vested with all the right and title of the owner as already indicated, even if the agent has no right to pledge the receipt or bill, and is acting fraudulently, provided, of course, the bank itself is acting in good faith.

If the agent is a warehouseman he cannot give a valid warehouse receipt for the goods of his principal which he has in store.

The powers of an agent under this section are those given by article 1740 of the Civil Code.

1740. Any agent entrusted with the possession of goods, or of the documents of title thereto is deemed the owner thereof for the following purposes, that is to say:—

1. To make a sale or contract.

2. To entitle the consignee of goods consigned by such agent, to a lien thereon, for any money or negotiable security advanced or given by him to or for the use of such agent, or received for him by such agent for the use of the consignee, in like manner as if such agent were the true owner of the goods:

3. To give validity to any contract or agreement by way of pledge, lien or security, made in good faith with such agent, as well as for an original loan advance or payment made upon the security of the goods or documents, as for any other or continuing advance in respect thereof:

4. To make such contract binding upon the owner of the goods and on all other persons interested therein, notwithstand-

ing the person claiming such pledge or lien had notice that he was contracting only with an agent.

The law of Ontario is practically the same as our law, as both have been taken from the Consolidated Statutes of Canada.

The question of what is necessary to constitute an agent has been considered in several cases before our Courts. In one case a piano was shipped to a music teacher on the representation that he had a customer for it. If this customer did not buy he was to return it. He shipped it to another city consigned to a name which he had assumed, when he obtained advances on it. It was held that he was not an "agent" within the meaning of the Act, and that he was not entrusted, and there was no valid lien for the advances.

In an English case J. Miller said "The term "agent" does not include a mere servant or caretaker, or one who has possession of goods for carriage, safe custody, or otherwise, as an independent contracting party; but only persons whose employment corresponds to that of some known kind of commercial agent."

And where an English merchant sent hides to a Montreal tanner to be tanned, it was held that the tanner was not an agent, and that the bank which had made advances to him in the hides had no lien as against the owner.

Under What Circumstances Can the Warehouse Receipt Be Acquired.

Given a valid warehouse receipt, or bill of lading, and a person whether as owner or agent, qualified to offer it as security, the bank is restricted by section 75 in its dealings with such a customer in three ways:—

1. The bill or note must be negotiated at the time the bank acquires the security.

2. The debt or liability must be contracted at the same time, or

3. At the time the bill or note is negotiated there must be a written promise or agreement that such warehouse receipt or bill of lading will be given.

There are several grounds for a somewhat strict interpretation of the present section and others of a like nature. The general rule as laid down in section 64 is that a bank shall not either directly or indirectly lend money on the security of any goods, wares and merchandise. Sections 73 and 74 which are among the exceptions to 64 are controlled by the present section, which is prohibitory in declaring that a bank shall not acquire or hold any of the documents of title named, except on terms indicated.

1. *When is a Bill Negotiated, or a Debt Contracted?*

Under the terms of the Bills of Exchange Act a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. So a negotiation is not necessarily a sale of the instrument, but may be a pledging or a mere transfer of possession. The word "negotiated" would appear to be used in a narrower sense in this section. Its being joined with the words "debt or liability contracted" would seem to restrict it to the purchase or discount of the bill or note by the bank, and not to include the renewal, which is treated as something distinct in the concluding part of the section, which says, "but such bill note or debt or liability may be renewed, or the time for payment thereof, extended, without affecting any such security."

The jurisprudence has now dispelled all uncertainty by deciding that a renewal is not a negotiation in the sense of the section, and accordingly a warehouse receipt taken by a bank on the renewal of a note, no actual advance then being made, cannot be held as a valid security. And even the fact that when the renewal note and the warehouse receipt were taken by the bank, another warehouse receipt which had been taken when the debt was contracted, was surrendered, was held not to be a negotiation, or sufficient to bring the transaction within the provisions of this section.

And where notes were discounted and the proceeds placed to the credit of the customer when the assignments were given but the moneys were really under the control of the bank, it was held that the notes were not "negotiated" and the securities were consequently void against the assignee for the creditors.

In another case where a warehouse receipt was endorsed to the acceptor of an accommodation bill by way of security for his acceptance, it was held that there was no debt contracted at the time so as to give the acceptor a valid claim to the property mentioned in the warehouse receipt.

2. *Written Promise or Agreement*:

The Bank Act of 1871 provided that the bill of lading or receipt should be transferred only when the bill or note was negotiated, or the debt contracted, unless at the time there was an *understanding* that they should be given subsequently. In the Bank Act R.S.C.C. 120—the word used is *promise;* in the present Act it is *written promise or agreement*:

It must be borne in mind that a written application for a line of credit will not constitute an advance or a negotiation of a bill. The bill or note will be negotiated, or the debt or liability contracted at the moment when the advance is actually made and the proceeds credited to the customer. This is the moment at which the bank must be in possession of the written promise, and it is immaterial, whether this written promise has been made previously to the advance, or whether, as each note under a new credit is discounted, an additional promise to give security to cover such additional note should be taken.

It might be better to rely upon the original promise, as the taking of a subsequent promise for part of the advance might be held to imply a doubt as to the validity of the original promise; whereas the terms of the Act are clear that if the note or bill is negotiated upon the written promise or agreement that such security would be given it is sufficient.

In the Royal Canadian Bank *vs* Ross (40 U.C. Q.B. 466) the bank made advances to be secured by bills of lading and warehouse receipts for coal and stone when received. The goods came from time to time, and bills of lading and warehouse receipts were given to the bank. The transactions were sustained and it was held to be no objection that the agreement was to give bills and receipts for goods, of which at the time the customer was not possessed.

In scarcely any of the cases on the subject do the precise terms of the agreement come in question. In most of them, all that appears is that there was an agreement to give security. Once this was clearly proved it seems to have been considered that the conditions were met.

In drawing up such an agreement care should be taken that it is made wide enough. The promise may include more than the receipt or security, but the latter cannot cover more than the promise. The property need not be in the possession of the customer, or even in existence when the customer obtains the advance, but it must be in contemplation that he is to acquire it. The promise may be to give these securities from time to time.

The promise, like the receipt itself should further identify the goods as far as possible and should refer to the specific class of security which the customer is to furnish. The more particularity given to the description and the more specifically the goods are indicated, the less is the margin of doubt and danger.

Finally in the event of shipment the bank may exchange a warehouse receipt for a bill of lading, or on the arrival of goods may exchange the bill of lading for a warehouse receipt.

Mr. Lash, reviewing this question, has given the following rules for advances on the security of a warehouse receipt.

1. It can be acquired only as collateral security for the payment of a debt (or liability) incurred in its favour in the course of its banking business.
2. The receipt must be given by a person for goods in his actual, visible and continued possession as bailee thereof in good faith, and not as his own property.
3. A note taken by way of renewal or substitution or otherwise representing in substance, though not in form a pre-existing indebtedness, is not negotiated within the meaning of the statute.
4. A warehouse receipt can be taken in substitution for one previously given.
5. If the receipt be not given at the time a bill or debt is negotiated, it can be given afterwards provided there has been at the moment of negotiation a written promise or agreement to give it.

We shall defer the consideration of the bank's privilege or preference over the unpaid vendor, and the manner in which the goods held under a warehouse receipt may be disposed of, until the next lecture, as these provisions are the same for all advances, whether on warehouse receipts, to manufacturers, or to dealers.

FIRST PRINCIPLES OF CONTRACT.

A Manual for Business Men.

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THE Law of Contract is the law dealing with a subject which concerns us all. The Law of Real Property only affects those who have landed possessions; the Law of Torts does not affect the peaceful and law-abiding citizen; while the Criminal Law deals only with the punishment and prevention of crime.

With the Law of Contract the case is very different. It is the law which affects us intimately and every day; and for this reason, if for no other, it is important that every one should know something of its general principles. Nor is this so difficult as would be the case with the other branches of the law, for in the words of a great writer "it is not founded upon any positive or arbitrary regulations, but upon the broad and general principles of universal law." For the law of contract is that branch of the law which above all others is instinct with the sturdy common-sense of the people; and it owes its existence not to the lawyer or conveyancer, but to the every day business transactions of the man in the street.

Most grown up people every day in their lives enter into some kind of contract, or to use a legal phrase subject themselves to "contractual obligation." And it is not only adults who are perpetually being brought into the contractual relation. In almost every case where there has been a payment of money (with the exception of the case where money is transferred as a gift or present), some kind of contract has been entered into.

Let us take a simple case by the way of illustration. Jones, a business man, goes to his office every day in a tram-car, riding there and walking back. Now the moment he hails the conductor of the car, in order that he may be taken towards his destination, a contract is entered into between Jones and the proprietors (of whom the conductor is the agent.) This contract, simple as it seems at first sight, may lead to very important results, which are solely and entirely due to the existence of that contract, and which otherwise could not occur.

But before we consider these results, we must first inquire what is the exact nature of the contract which has been formed between Jones and the proprietors of the tram-car, and at what exact time it took place. Now the mere fact that a public conveyance like a tram-car is plying up and down a street is a constant *offer* by the proprietors to carry the public on certain terms, and when any member of the public (in this case Jones whom we are taking by way of illustration), hails the conductor, he by that very act *accepts the offer;* and from that moment the contract is binding on *both parties* (in this case on Jones and on the proprietors of the tram-car) This is called "Offer and Acceptance," about which we shall have to say more presently; but we must carefully note that in this "Offer and Acceptance" there is included a *promise* by each person or party. [N.B.—'*Party*' is the correct legal term for each of the two (or more) persons taking *part* in a contract.] Now in this instance there is on the one side a 'promise to carry' and on the other side a 'promise to pay,' but each of these promises is really conditional on the other. Thus on the one hand the tram-car proprietors by the very fact of their car running are regarded as saying to Jones (or any other member of the public), "If you will pay us, we will carry you;" while the answer of Jones (or any other member of the public who accepts the offer) legally amounts to "If you will carry me, I will pay you."

The moment then that Jones hails the car, the offer of the proprietor to carry is accepted and at that moment *provided that there be no mistake*), the contract is formed; for as we shall see further on if there is a *mistake* as to the "subject matter" of the contract (as it is technically called,) then no contract is formed. For instance, if in this case Jones hails the wrong car, one going in a different direction from the one which he thinks he is hailing, then, even though the car stops in answer to his summons, there will be no contract. He explains where he wants to go, and finding that he has made a mistake waits till the car which he really wants comes past.

But supposing that there is no mistake, that the "offer" is accepted and the contract is formed; what happens then? From that moment there is a legal obligation on both parties. This obligation has two necessary consequences. First of all

Jones is legally bound to pay his fare, and can be brought before a court of law if he refuses to do so. Secondly, the proprietors of the car are bound to carry him to any point in the regular route taken by the car at which he desires to be set down, and if they neglect to fulfil their part of the contract, they are equally liable.

But other consequences may follow. Suppose that owing to the fault of an employee, an accident occurs, the car is upset and Jones breaks his leg. In that case the proprietors, because of the contract which they have entered into with Jones will be responsible for damages occasioned to Jones by the negligence of their servant; whereas if the contractual relation had not been entered into, they would not be responsible. Suppose, for instance, he had mounted the car unperceived by the conductor (which could hardly happen in the day-time, but might well occur at night) with the deliberate intention of getting a ride for nothing. In such a case Jones would be on the car by fraud and *without a contract having been formed,* and in such a case supposing an accident were to occur and Jones were to break his leg, the proprietors of the car would not be responsible.

Let us now take another elementary case of a contract to which a child is a party. Let us suppose that on the car Jones gives ten cents to a school-boy who is a fellow passenger. The boy being possessed of this sum, as soon as school is over goes to the nearest candy-store, and asks for ten cents' worth of candy, which he sees in the window of the store. Now the proprietor of the store by the very fact of his being a shopkeeper makes a constant offer to the public to sell them the wares that he displays in his shop. And when the boy asks for a specified amount of the candy that he has seen in the window, he at that moment accepts the general offer of the store-keeper, and a contract is formed between the two parties. At that moment the contract is what is technically called "executory," that is to say, it is formed, but is not yet 'executed' or carried out. But when the store-keeper hands the boy his purchase, and the boy in return hands the money to the store-keeper, the contract is no longer "executory," but executed by both parties.

And here it may be well to mention another legal term, which plays an important, perhaps I might say *the* most important part, in the English law of contract, namely the word "consideration." Now in this particular instance the dime is the boy's "consideration" for the shopman's candy, and the candy is the shopman's "consideration" for the boy's dime. The origin of the term (which is now part of the technical phraseology of the law of contract), may be made clearer, if we put it in this way. The boy is regarded as saying to the shop-keeper "In consideration (or, as a consideration) for your giving me the candy, I will give you a dime;" and the shopman is regarded as saying to his customer "In consideration (or, as a consideration) for your giving me a dime, I will give you the candy."

What is a Contract?

Having briefly considered two examples of elementary contracts, we must now pass to the question, "What is a contract in the eye of the law?" And we may answer the question as follows: "A contract is *an agreement which is legally binding* on the two or more persons or parties who make it. Now by 'legally binding' is not meant always enforceable in the sense that the law will compel the parties to perform the contract (which in many cases would be a physical impossibility); but rather that if either party breaks the agreement the law will give damages to the other party for the *breach* of contract. It is true that in some cases Courts of Chancery (or Equity as they are also called) will order 'specific' (i.e. actual) 'performance' of a contract when mere damages would not be sufficient compensation to the party aggrieved, and when performance of the contract is possible; but in the majority of cases when one party to a contract has failed to perform it, the natural and obvious remedy for the other is to sue for damages. For instance, in the case we have already given supposing an accident occurs by the fault of the driver and Jones' leg is broken, he neither desires nor is it possible to give him specific performance of the contract. The appropriate remedy in this and similar cases is to sue for such damages, as a jury may consider adequate to compensate the injured or aggrieved party for the loss he has sustained.

Legally Binding.

I have said that a contract is an agreement which is legally binding on the parties who make it, and we must now consider this proposition with some care; for at the very outset of our enquiry it must be stated as a fundamental principle that "not every agreement between two parties is legally binding." There are indeed many agreements which a man will not be legally bound to perform, though he may be bound in honour and conscience to do so. For instance, suppose that a merchant of London (England) whose business is chiefly concerned with the Cape is asked to give a donation to a new cathedral to be built in Capetown and promises to give £50. Supposing he afterwards wishes to repudiate his promise. Though in honour and conscience he would no doubt be bound to his promise, yet if he refused to pay he could not be sued at law for the money. And the reason is because there is a great principle running through the law of contract, that there must be some consideration for a promise, otherwise it cannot be legally enforced. Of this principle we shall have more to say further on. For the present it will be sufficient if we master the idea that the necessity of some "consideration" to make a promise enforceable is the guiding rule of the law of contract. To this guiding rule there is, it is true, one great exception, but it is so simple and logical that it only illustrates once more the old adage that 'the exception proves the rule.' Thus in contracts under seal, that is to say where the contract is evidenced by a 'deed' (which is a legal document formally sealed according to the provisions of the law) no 'consideration' is *prima facie* necessary to make the agreement contained in the deed valid. The formality of the proceedings necessary to prepare, sign and seal such a document is considered, and surely reasonably, considered to be sufficient to prevent the necessity of any actual 'consideration' (though even in the exceptional case of a contract under seal, if it could be proved that the deed was obtained by fraud, the party who obtained it would then have to show that he did give some 'consideration' for it, or the deed would be of no avail.)

There is another great principle which permeates the whole of the law of contract, though it has not been brought into such prominent notice as the necessity of 'some consideration to support a promise.' The principle I refer to is that in any contract where the 'consideration' is not definitely agreed upon beforehand, the word 'reasonable' may be regarded as an implied term of any 'consideration' which has not been defined between the parties. An example will make my meaning clear. Suppose a man to go into a restaurant and order and partake of luncheon there without previously enquiring what he will have to pay. Now on the one hand it is clear that by that very order he accepts the general offer to the public to provide them with meat and drink which the restaurant-keeper by the very fact of his trade is always making. The customer therefore having given his order for luncheon at that moment completes the contract by his acceptance, and at that moment becomes legally bound to pay the proprietor of the restaurant. But no consideration having been named, it follows that the consideration which the restaurant-keeper can legally demand from his customer must be a reasonable one, or perhaps we may put it even more accurately if we say must not be an unreasonable one. Suppose, for instance, to take an extreme case—because extreme cases are the best illustrations of a principle—that the restaurant keeper after the customer has had a luncheon of soup, fish and pudding should in answer to his inquiry as to what sum he owed reply, "$500.00." It is obvious that in such an extreme case as this the customer could indignantly repudiate any such payment. His proper course would be to offer ('tender' is the correct legal term) such sum as in the opinion of a reasonable man would be a reasonable recompense for the food and accommodation of which he had partaken, and to decline to pay anything more: and if the proprietor should then choose to summon him, his (the customer's) action would certainly be up-held in any court of law. I have taken an extreme example to prove the point, but the same principle would apply if a charge of say $5.00 were made for the luncheon mentioned: the principle being the same, namely that a reasonable charge must be made, taking of course the character and situation of the restaurant and the quality of the food and accommodation provided into consideration.

This principle is, I think, as good an illustration as any of the general character of the law of contract. It is above all things founded on reason and commonsense, and in no other branch of the law is the sturdy common-sense of the people so conspicuously manifest.

It is this that makes the study of our law of contract so interesting, and especially the study of the cases decided according to that law. In almost every instance it will I think be found that the decisions at first sight recommend themselves to the intelligence; and even where this does not *primà facie* appear it will probably be found that although at first sight a particular decision may appear unjust, there were, when the case is examined, two conflicting principles to be adjusted, and that the decision arrived at was really correct.

As an instance of the latter I may quote the case of Stilk vs Meyrick (Campbell vol 2. p. 317) where the captain of a ship trading from London to the Baltic had promised the seamen that if they would work the vessel home, they should have the wages of two sailors who had deserted divided between them. This promise he failed to perform, and was accordingly sued for the breach. The court held that the promise was not binding, and though at first sight the decision may seem inequitable, the reason given by the court in the following terms is difficult to criticise. "The agreement is void for *want of 'consideration,'* There was no 'consideration' for the ulterior pay promised to the mariners who remained with the ship. Before they sailed from London they had undertaken to do all they could under the emergencies of the voyage......The desertion of a part of the crew *is to be considered an emergency of the voyage* as much as their death; and those who remain are bound by the terms of their original contracts to bring the ship in safety to her destined port." And it must be remembered that even in this particular case the decision would have been otherwise if risks had arisen which were not contemplated in the contract. It is an implied term in such a contract that the ship should be seaworthy. Accordingly in the case of Turner *v.* Owen where a sailor had shipped on a vessel which afterwards proved unseaworthy, an extra reward offered to induce him to stay on the ship *was held to be legally binding,* because in that case there was a 'consideration' for it, namely the extra risk incurred by the ship being unseaworthy.

Different Forms of Contracts.

Having now some elementary notion of what a contract is, we may briefly consider the different forms of contract which prevail under English law. We have already seen in the cases we first took that many contracts can be entered into by word of mouth; and in far the majority of cases the simple contracts of daily life are entered into and executed by verbal agreement without any writing being used or being legally necessary. In most cases these verbal contracts are just as binding in the eye of the law as contracts which have been clearly defined by writing, or even set forth with all the formality of a deed. But though the general rule is that verbal contracts are binding, there are (a) certain cases in which the English law will not give validity to a contract unless it be 'under seal' as it is called i.e. a contract where a 'deed' is necessary for a court of law to take official cognizance of the contract: and (b) there are other cases where writing must be used in order that the contract may be binding. A deed is a document consisting of paper or parchment, in which the necessary terms are written or printed. A deed must be signed, sealed and delivered by the party to it. He touches the sealed wax (or seal as it is called) which has been prepared beforehand for that purpose and utters the words "I deliver this as my act and deed." These words indicating his intention to deliver (or hand over) the deed, are considered in the eye of the law equal to delivery, and the formality is thus completed. Now under English law certain contracts to be valid or binding must be 'under seal' that is to say they must be expressed in a document similar to that which I have just described. It is important that we should thoroughly comprehend what these contracts are: and they are not difficult to remember, as there are not many of them. First of all let us take the cases where owing to various statutory enactments a contract to be valid must be under seal. They are four in number, namely;

1. A lease of lands, tenements or hereditaments for more than three years; a transfer of a British ship or any share therein; a transfer of shares in companies governed by the Companies Clauses Act; and lastly a sale of sculpture with copyright. All the above to be legally valid must be made by deed. For instance, supposing there were a written agreement embodying a lease of two years and eleven months duration, that lease would be perfectly valid, and would bind the parties

thereto without the formality of a deed; but a lease for one month longer or any other period exceeding three years would not under English law be legally binding unless set forth under seal.

Secondly at Common Law (an expression which means here according to the unwritten law of England as distinguished from the law which has been defined by Parliamentary enactment) a corporation can only be bound by contracts to which it has set its common seal excepting in trifling matters of every day occurrence. An illustration will make the distinction clearer. "A municipal corporation cannot enter into a contract to pay a sum of money out of the corporate funds for the making of improvements within the borough, except under the common seal," but if engaging the service of an inferior servant such as a porter it need not use the common seal, as in such instances "to hold the rule applicable would occasion very great inconvenience, or tend to defeat the very object for which the corporation was created."

The other remaining instance we have already touched on. A gratuitous promise is not binding on the maker according to the general principle of the English law of contract that there must be a 'consideration' for every promise; and such a gratuitous promise can only be made binding when accompanied by the solemnity and formalities of a 'deed' or document under seal.

We have now seen (a) that most contracts can be made verbally or by word of mouth (b) that some few contracts have to be in writing with the additional formality imparted by a deed: it remains (c) to consider the contracts which must be in writing, and we are now brought face to face with one of the most important and far-reaching of legislative enactments, namely section 4 of the famous Statutes of Frauds (29 Car. II. c. 3.§4) which became law in the reign of Charles II, and has ever since been the starting point from which the decision of case law has proceeded in reference to all cases where the question has been whether the contract should or should not have been reduced into writing. Before we examine the fourth section we must consider for a few moments what was to *prevent perjury or false-swearing in the courts of law.* It had been found by experience that (particularly in certain special classes of cases) where contracts had been made by word of mouth there was a tendency for both parties to give such contradictory evidence of what the real terms of the contract were, that it was evident there must be perjury on one side or the other, and from the very nature of the case where the subject matter of the contract had been settled by two persons without the presence of any direct witnesses it was difficult if not impossible to decide with which party the truth lay. Accordingly it was deemed desirable that in certain cases a contract should not be legally enforceable unless it were in writing and duly signed; for if each party committed their terms of agreement to writing it was clear on the principle, "Litera scripta manet" that the system of false swearing which was so largely prevalent would be abated. It was to give effect to this that the famous Statute was prepared and eventually became law; and there seem good reasons for believing that the principal draftsman of this important and salutary measure was Lord Nottingham, the great Chancellor, who has been termed "The Father of Equity" from the fact that he was the first Chancellor who laid the foundations of the great system of Chancery (or Equity) Jurisprudence. Even as a young man he was a diligent student, and fond of repeating the maxim, "A Law student ought to read all the morning, and talk all the afternoon." That he had some share in the measure there seems no reasonable doubt, and the fact gives additional interest to a statute, which is of the utmost importance to business men.

The fourth section, runs as follows. (It should be studied earnestly and carefully, and it is so important that it would be well to commit to memory at least the five principle heads with which it deals.)

Statute of Frauds.

§4. No action shall be brought whereby to charge any *executor* or *administrator* upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon *any special promise to answer for the debt, default or miscarriage of another person;* or to charge any person upon *any agreement made in consideration of marriage;* or upon *any contract or sale of lands, tenements or hereditaments,* *or any interest in or concerning them;* or upon *any agreement that is not to be performed within the space of one year from the making thereof;* unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be *in writing;** and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized."

Now, first of all, it must be clearly understood in reference to every part of the section that the mere fact of the contract being in writing will not atone for the absence of 'consideration.' The object of the Statute is not to do away with a *quid pro quo,* but to prevent false swearing; secondly, it should be remarked that the agreement is to be signed *by the party to be charged* (or by his agent.) If Smith therefore verbally offers to sell a piece of land to Jones, and Jones accepts in writing to which his name is attached, Jones cannot sue Smith on the contract (though he can be sued by Smith) until and unless Smith by answering Jones' letter shows that the acceptance by Jones is in accordance with the verbal offer.

Suppose, for instance, Smith meeting Jones in the street says "I will sell you that cottage you were looking at for $1,500." Jones replies, "I will think it over and let you know." He writes that afternoon, "Dear sir, I accept your offer, and will give $1,500 for your cottage, (signed) W. Jones. To Mr. A. Smith." Now thus far Jones is the only party who can be charged under the Statute. But supposing Smith replies as follows, "Dear sir, Am pleased to note you accept my offer. Will see my solicitor re transfer at once. (signed) A. Smith. To Mr. W. Jones." Then by this further letter, signed by himself, Smith has supplied the 'memorandum or note' necessary to make himself chargeable as well as Jones, and they could each sue the other for specific performance, supposing one of the two parties declined to carry out the contract (and, of course, also in such a case for breach of the contract, if the party aggrieved preferred to recover damages rather than get the contract performed in its entirety).

The parties then and the "subject matter" of the contract must appear in the memorandum; but that memorandum may consist of various letters and papers, provided that they are connected and when taken together form a complete whole.

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*Pencil writing would satisfy the requirements of the Statute; but of course it is safer to use ink.

Lastly, the 'consideration' as being an important part of the agreement must appear in the written documents of which the memorandum consists: excepting in the case of the 'promise to answer for the debt, default or miscarriage of another.' By the Mercantile Law Amendment Act an exception is made in this particular case and a promise is not to be 'Deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document."

Having said so much on the section generally, we may briefly consider its five leading divisions.

1. Neither at common law or at equity is an executor bound to pay anything out of his own pocket: the estate of the deceased person bears and legitimately bears the incidental expenses. The section does not refer to such cases as this at all. The cases it refers to are those where to save the credit of the deceased or for any similar reason the executor takes upon himself to answer damages out of his own estate. In such cases the Statute provides that *the executor's obligation, and the 'consideration' for which* it is *given* must be in writing before he is legally chargeable.

2. The promise 'to answer for the debt, default or miscarriage of another person' is what the Statute requires to be in writing. This promise is what is legally known as a *guarantee* or *suretyship;* in other words it is a promise involving *indirect* responsibility, and for a promise to be a guarantee, there must be three parties concerned. Thus if Jones comes to Robinson's shop with Smith, and when Smith has ordered goods from Robinson, Jones then says to Robinson, "If he does not pay you, I will," this promise is a guarantee and such a promise must be in writing in order to satisfy the requirements of the Statute. But supposing that under the above circumstances Jones should say to Robinson, "Let him have the goods, *I* will see you paid." This promise is an *'indemnity,'* in other words a promise involving *direct* responsibility, and does not require to be in writing.

The distinction then between a *'guarantee'* (or 'suretyship') on the one hand, and an '*indemnity*' on the other must be carefully noted; the former, as being a promise of indirect responsibility, must be in writing in order to comply with the requirements of the Statute, the latter being a promise of direct responsibility is not such a promise as is meant by the Statute, and therefore need not be in writing. At the same time it may be mentioned that as a matter of business *it is desirable that all contracts, about the subject matter or precise terms of which any doubt or dispute may possible arise* in the future, *should be reduced to writing, not because such writing is legally necessary but because it is practically expedient.* If this salutary and simple rule were more generally observed, many unnecessary disputes and law-suits would thereby be avoided.

3. The 'agreements made in consideration of marriage' refer not to the contract for marriage itself but to incidental agreements arising therefrom; as, for instance, agreements to settle property on a marriage taking place. Thus a letter written by a father signifying his assent to the marriage of his daughter with J. S., and that he would give her a marriage portion of £500, will be an agreement within the meaning of the Statute, and being in writing and signed would be enforceable at law. On the other hand the actual promise to marry is *not* one of the agreements referred to under this heading of the Statute; and that promise need not of course be in writing.

4. Contracts for the sale of land must by the Statute be in writing ; and so must contracts for the sale of any interest in or concerning them. This latter clause "refers to agreements not operating as an immediate transfer or conveyance of an estate or interest in land, but as contracts to make or execute a grant or transfer, or conveyance at some subsequent period. Agreements for leases and for the sale, assignment or surrender of leasehold estates, being contracts for a grant or transfer of an estate or interest in land, are within this clause of the Statute, and must consequently be authenticated by a signed writing."

5. The "agreement not to be performed within the space of a year" refers to contracts which are not by the terms of them to be fully and completely executed within a year. Thus a contract for a year's service made on the last day of December

with the term of service beginning on the 1st of January would be an agreement referred to by the section, and would have to be in writing to be enforceable at law. But if the contract has been wholly performed by one party, it is then no defence for the other side to say that there is no memorandum in writing, for the Statute does not apply where the consideration is executed.

Again the Statute does not extend to contracts which are to be performed upon the happening of some indefinite event, which may or may not take place within a year. Thus "where the agreement is to be performed upon a contingency, and it does not appear, in the agreement, that it is to be performed after a year, a note in writing is not necessary, for the contingent and uncertain event might happen within the year; but where it appears by the whole tenor of the agreement, that it is to be performed after the year, a note (in writing) is necessary."

We have now briefly considered the principal features of the fourth section of the Statute of Frauds.

There is another important Statute which must be mentioned in this connection, namely, the Sale of Goods Act, 1893; whose fourth section virtually replaces the 17th section of the Statute of Frauds.

Sale of Goods Act.

§4. "(1) A contract for the sale of any goods of the value of £10 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, *and actually receive the same,* OR *give something in earnest* to bind the contract, OR *in part payment,* OR *unless some note or memorandum in writing of the contract be made and signed by the party to be charged* or his agent in that behalf.

2. The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completion thereof, or rendering the same fit for delivery.

3. There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods

which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not." In an elementary treatise on the law of contract it is not, of course, possible to enter into details, but it should be carefully noted that the 'note or memorandum in writing' is only legally necessary if the other requirements have not been complied with. For intance, suppose a shop-keeper to verbally order and afterwards receive chests of tea of the value of £15 from a tea-merchant. In such a case as this the tea-merchant's claim for the money will be legally enforceable (even though there be no written evidence of the transaction between the parties), because in this case the buyer *has actually received* the goods sold. It should also be noticed that though £10 is the sum mentioned by English law, there is no magic in that particular sum from the business point of view. It is indeed always desirable in business transactions (even though the sum involved be far less than that mentioned in the Statute) that there should be some note or memorandum in writing, not necessarily to make the contract enforceable, but to prevent the possibility of dispute. In other words each party to such a contract should insist on having the written and signed undertaking of the other. Accuracy in business transactions is the handmaid of honesty; and all business transactions should therefore be conducted in a business-like way.

R. E. MACNAGHTEN.

(To be continued.)

CASH RESERVES AND FINANCIAL SUPREMACY.

SOME little while ago—on the 4th of August to be exact—the *Wall Street Journal* had an interesting editorial entitled "English and American Reserves," in which the strength of the banking situations of the two countries was compared. The article, after pointing out that the specie held by the Bank of England underlies the entire deposit liabilities of all the banks of Great Britain, goes on to say "The other banks hold cash to a certain extent but only to a very small amount as compared with their liabilities, and they make their deposits in the Bank of England practically their sole reserve." "In 1905 the deposits, the accounts current, and circulation of all the banks in Great Britain amounted to about $4,625,000,000. There was at the same time about $184,000,000 of coin and bullion in the Bank of England, this amounting to less than 4 per cent of the entire deposit liabilities of the United Kingdom.

"In the United States, the deposits of all the banks and trust companies with the exception of the savings banks amounted in 1905 to about $8,000,000,000. The national banks held in large measure the same relation toward this aggregate of bank credit that the Bank of England does toward the other banks of that country. Our national banks are the reserve institutions of the United States, and last year they held about $680,000,000 of cash, this being 8.5 per cent of the deposit liabilities. Thus the reserves of the national banks in proportion to the deposit liabilities of this country are more than double the money the Bank of England has in proportion to the deposit liabilities of that country."

It is mentioned also that the other banks and trust companies of the United States held about $314,000,000 of cash, which amount represented a supplementary reserve to that of the national banks.

Before going further it will be interesting to compare our cash reserve in Canada with those just quoted.

At the end of October the total liability, on deposits and note issues, of the Canadian chartered banks and the two

Province of Quebec savings banks, the Montreal City and District, and La Caisse d'Economic, amounted to $747,554,000. For the deposits of the other institutions which do not report monthly—the loan companies and trust companies—an allowance of $20,000,000 and $12,000,000 respectively is ample. Taking them at that, the aggregate liabilities become about $770,000,000. The deposits in the two departments of the government savings banks can fairly be omitted. A reserve of 10 per cent in specie is held in the Dominion Treasury against them, and, besides, the chartered banks are under no obligation, legal or moral, to take care of them. But, in regard to the aggregate of credit mentioned, $770,000,000, the chartered banks stand in the same relation as the United States national banks stand toward the aggregate of $8,000,000,000 shown for that country. The specie and legals held by the Canadian banks on 31st October amounted to $68,641,000 or 8.91 per cent of the liability. Our percentage of reserve therefore exceeds by a narrow margin the percentage shown by the American national banks. The cash reported by the national banks is made up, as ours is, of specie and legals. The quality of the specie would be, of course, the same in both cases. Some critics might be disposed to question the placing of the legal tender notes of the Dominion of Canada, for reserve purposes, on an equality with the legal tender notes of the United States. Though the resources, actual and potential of the latter, may be described as unparalleled, yet that is no reason why the notes of our government should not rank with theirs so long as ours are, as at present, convertible on demand into gold. In other words, if our treasury stands ready to redeem in gold any of its notes that are presented, that is the highest quality that demand notes can have, no matter how powerful is the government that issues them. The amount of Dominion notes in circulation on the 31st October, 1906, was $58,169,801. The specie reserve applicable to them was a little over $34,000,000, or over 58 per cent, which is certainly ample, particularly when $13,000,000 of the issue consists of $1 and $2 notes held by the general public.

Then, against the supplementary reserve of $314,000,000, or less than 4 per cent, claimed by the United States, we can fairly place the $60,536,937 of call loans elsewhere than in

Canada, and the $17,836,693 of net foreign bank balances. This sum, $78,373,630, makes another 10.17 per cent of our liabilities. Though it is not cash it is for all practical purposes what may be described as a "call" on the gold supply of New York and London, chiefly New York. By means of this we have theoretically the power of drawing here somewhere between one-twentieth and one-tenth of the whole cash reserves of the United States national banks. Contrasting strongly with our position in this respect is that of the great national banks in New York City which hold the bulk of the American national cash reserves. So far from having heavy credit balances abroad they are believed to be owing, at the present time, immense sums to London and Paris. It is well known that the recent large shipments of gold from London to New York were brought about chiefly by means of loans negotiated by American bankers in London; and, though a portion of this indebtedness has been paid, the volume still outstanding is placed by well informed authorities at a high figure.

Going no further than this it would seem plain that the banking position in Canada, so far as cash reserve is concerned, is considerably stronger than that in the States.

But this is a digression. We must get back to the discussion of the conditions in England and the United States. At the end of the article already quoted the *Wall Street Journal* makes the following admission: "Banking in this country, distributed as it is over an area as large as that of Europe, needs a greater reserve protection than the more concentrated banking of England." This admission might have been carried further; the *Journal* might have said that owing to the nature of the United States banking system as compared with the English system or the Canadian system the banks of the United States, to be in as strong a position as the other two, must carry a heavier reserve of cash against the aggregate deposits. A moment's consideration will make this point clear. There are in Canada some 1,600 banking offices. In the United States, taking National banks alone, there are over 6,000 offices, and counting state banks there are over 10,000. Everybody knows that the main purpose of cash reserves is to meet extraordinary conditions—of panic or other emergency. During normal times the banks in all countries know pretty well what demands will be made upon them and how much cash will suffice to carry their business. But they do not know what day or what moment their creditors may take fright and exercise their right to demand cash to a wholly abnormal extent. To guard against this, all find it necessary to maintain a safety fund, or reserve of cash, or of balances in banks of great strength, or both. Now let us picture what would likely happen in case of an important financial crisis in the United States and in Canada. Let some event happen to shatter the confidence of depositors generally, and it would at once be seen that the United States, because of its weaker banking system, would require a much larger proportion of cash to deposit liabilities than we would. For, at the first intimation of grave danger, some nine or ten thousand different institutions would begin to pull at the central reserve. Every little independent office in the Union would, at practically the same moment, feel the necessity of increasing its cash on hand, and they all would commence demanding the return of their New York balances. Many would stock up with a much greater amount of cash than they needed. It would turn out that the banks in some districts would have and hold very large amounts and not be subjected to anything extraordinary in the way of pressure. The extra cash they had would be therefore doing little or no work at a time when every available dollar was needed. No doubt there would be efforts at co-operation, and at a general direction of operations, but the system would prevent anything very satisfactory being provided. It would not be at all extraordinary if the New York banks were obliged to have recourse again, as they did in 1893, to Clearing House certificates notwithstanding that leading bankers there have declared that that expedient would not again be resorted to. On the 12th November, 1906, the liabilities of national banks on deposits, to National and State banks, and trust companies and savings banks, aggregated $1,555,000,000, or more than double the cash held. Among the resources is shown $605,237,000 as due from approved reserve agents. It is this latter sum that would be particularly at the call of the interior banks, and besides being subjected to the demand from banks keeping balances with them, the approved reserve agents would be fairly overwhelmed with the requests for loans and accommodation that would pour in from frightened banks in many places.

The Secretary of the Treasury would no doubt do all in his power to restore confidence, and his power unquestionably is very great. But the great point in all this is that, because of the peculiarities of the American system it would not be possible for the banks themselves to deal with a situation of that kind in the most effective manner.

Next, suppose bank depositors in Canada to have received a similar shock. There would be a marvellous difference in the way the crisis developed. The 1,600 banking offices would not begin to pull at the central reserve, creating confusion and adding to the panic. Instead, the whole battle would be directed from the 35 head offices that control the 1,600 branches, as a matter of fact some 15 or 20 men who could be called together for conference at a few hours notice would have absolute control over the actions of practically all of the 1,600 offices. The telegraph wires would be flashing to these brain centres intelligence of what was happening in every district. The available resources would be thrown to the points that most needed them. There would be no panicky locking up of resources at places where they were not required, no tumultuous rush of hundreds of banks to Montreal and Toronto for loans. In short there would be all the difference that there is between union and disunion, between concentration and centrifugation; and it is not hard to see that a much smaller proportionate amount of cash would suffice wherever there is a system that permits the whole available resources to be handled in such manner. The description of how a crisis would be dealt with in Canada applies also to England. The banking control is centralized there quite as much as here. And in England there is another element making for stability that is not present in quite the same degree either in Canada or the United States. It is the very large proportion of gold coin in use in daily circulation among the people. The Bank of England notes are issued of a less denomination than £5, and except for a few issues of private banks the whole money in circulation of denominations less than £5, is metallic. The gold held by the banks does not bear nearly so large a proportion to the total gold holdings of the country as it does in the United States or here. In another respect, however, it is agreed in sundry well-informed circles that the cash reserves of England are deficient. London has been for generations the greatest international banking centre. The Bank of England rate and the condition of the London money market have been matters directly affecting every part of the globe. This has been so for several reasons one among them being the commercial activity of the English people, displayed everywhere in the world, and another the extraordinary banking facilities offered by London. The governments and people of nearly all the civilized nations have been in the habit of depositing funds and of borrowing in the London market. There is, in consequence, a vast aggregate of short date liabilities and assets present all the time. To swing this satisfactorily the reserve of gold should have increased with the increase of the business. This, London has neglected to do, chiefly because the joint stock banks and the Bank of England could not agree as to who should bear the expense. While the Bank of France has enormously increased its gold holdings in the last few years the Bank of England has done little or nothing in that respect. No doubt this has had its influence in leading foreigners to say that England's financial supremacy is passing away. The *Wall Street Journal,* on the 20th October, in discussing the rise in the Bank rate to 6 per cent said: "England has undoubtedly passed the zenith of her financial power. The Bank of England rate and the prices of consols do not possess the deep significance which they had fifteen or twenty years ago."

In some ways it is natural that with the growth and development of other financial centres such as New York, Paris and Berlin, some part of the prestige that once belonged to to London alone should be drawn away. And it is quite probable that the English banks have done more to assist the national commerce by their policy of putting their funds at the disposal of borrowers than they could have done had they locked up a greater proportion in the shape of gold reserve. But at the same time it is to be observed that the policy of going with very strong reserves is one that usually brings its own peculiar profits. And there is good reason for thinking that had the banks been able to agree in largely increasing the national stock of gold there would not now be so much disposition to question London's supremacy. A very interesting light is thrown on the situation by a correspondent of the New York *Evening Post,* described by the financial editor as "an exceptionally competent Paris authority." In a letter from Paris dated 6th December and published 15th December, he says. "The truth of the matter is that London, has found itself positively embarrassed. There is no doubt whatever, that this is a result of gold withdrawals for America. There has been this much of the unusual about these withdrawals, that they were in no respect a response to the natural movement of exchange between the two countries. On the contrary England was a heavy creditor of the United States and had no balance to pay to you. But the American banks needed gold to recruit their reserves, and no doubt for the purpose also of producing favourable effect on the New York Stock market. Now it was only at London that these bankers could practically procure this gold. They therefore addressed themselves to that market. To pay for this gold they put out three months drafts on London........The Bank of England cut the movement short by flatly refusing to discount a great sum of three months drafts drawn by New York on London. All these facts tempt one to remark that the embarrassed position in which the Bank of England found itself denotes something more—that it shows, in fact, a lack of real resources on the London market. London, which hitherto provided capital for the entire outside world, has unquestionably grown much poorer in these later years. What proves this assertion is that although, thanks to the increased production of gold, all other countries have been able to increase their metallic stock of money, England alone has not added to its own."

"One might imagine that, in place of accumulating gold it has increased its credit balances abroad. But that has not happened either; for if, on the one hand, England has become largely the creditor of America, on the other hand it is in debt to France for a sum very nearly equal. The position which England once filled is now filled by France. Holder of the most considerable stock of gold existing in any country in the world, France is also creditor of the entire outside world, and that without owing money to any other nation. It is France that holds the key to the financial situation, and it was naturally towards Paris that people turned in England as soon as the recent difficulties appeared."

Of course it is pretty well known how Paris has reached its commanding position. The French people are the greatest savers in the world. They accumulate and accumulate, and the money piles up in the great Paris banks. At the same time there is not much of an inclination on the part of the people to invest their savings in industrial ventures. Consequently there are not so many avenues for the investment of the funds in France and the Paris bankers have been obliged to find employment for it outside. But they are very particular about the investments they take. Only the very best securities are bought, chiefly those of sound governments. To illustrate their attitude it is only necessary to recount the history of the recent placing by the Pennsylvania Railroad of a $50,000,000 bond issue in Paris. The Pennsylvania is without doubt the strongest and richest railroad corporation in North America—in the whole world as a matter of fact. And yet, before the company could get the assurance that the bonds would be taken it had to submit to the most searching examination of its affairs by the agents of the French banks. To get the information they demanded the staff of clerks in the railroad offices had to work overtime for several weeks. And after all this it was not the easiest undertaking to get the loan put through.

As a general policy the French bankers have preferred to let their money out to other markets in the shape of short date loans and bills, rather than in purchasing investment securities. In this way they retain a greater command of the funds and by calling in the loans they can at any time draw gold from almost anywhere to increase their stock of the metal, which is already huge.

Then, besides, they exercise the sharpest discrimination as as to the purposes for which they lend their money. For example, the Bank of France has absolutely refused to let gold from its vaults go to America, even as advances on short date bills of undisputed excellence because the purpose for which it was wanted was to sustain a stock speculation. London was not so particular. Tempted by the high rates offered and by the quality of the names on the American paper the English banks let go their resources freely, so freely that the market was obliged in turn to apply to Paris for accommodation.

It is not to be expected that English, Canadian or American bankers would pursue a policy like that of the great

French banks. The Anglo-Saxon disposition is too strongly bent in the direction of economizing in gold reserves, and of pressing the machinery of credit almost to the limit of its capacity.

Every once in a while sharp illustrations are offered of the profit sometimes gained by being always strong. Now, for instance, Paris being the only centre possessing a surplus of funds can practically dictate the terms on which it will lend. And besides, all the time, it has enjoyed that prestige that always is accorded to immense strength.

There is a lesson in this for individual banks as well as for the various money centres. The bank that always maintains its cash reserves at a high ratio, though it may be obliged to forego some profit in ordinary times, can often recoup itself when the money situation becomes strained. And in all times its strength brings to it prestige and confidence.

H. M. P. ECKARDT.

THE CURRENCY QUESTION IN THE UNITED STATES—AS IT APPEARS TO A CANADIAN.

I THINK it was Lord Bacon who said: "Some books are to be tasted, others to be swallowed and some few to be chewed and digested." If this may also be said of the addresses delivered at a gathering of American bankers, I feel confident that my contribution to your menu card will be tasted only. Let me explain my presence at this gathering. When the president of the Canadian Bankers Association found himself unable to accept your gracious invitation to meet his banking brethren of the United States at St. Louis, I made an effort to secure a suitable substitute. I failed, and I am here representing the failure.

It may interest you to know something of the Canadian Bankers Association, and, in parenthesis, let me now say that if Canada has anything in her financial mechanism worthy of your consideration you are welcome to adopt same. At least so far as I am concerned, there is no opposition to your absorption of any good thing you may find in this address. I feel safe in saying this. There is nothing in it. You all remember the story of the editor's wife who aroused him at midnight with the statement that there was a burglar in the house. He turned over in the bed and said. "All right, if he finds anything, I'll get up and take it away from him." If you find anything in this address, please accept my rights of ownership.

To return to the Canadian Bankers Association. The original membership thereof was voluntary, and its work largely educational. In 1900, it became a business organization, incorporation was sought, and now by act of Parliament any one of the thirty-five chartered banks doing business in the Dominion of Canada is subject to supervision, so far as its note issues are concerned, by the Canadian Bankers Association. To it also has been given by Parliament the winding up of failed banks. Since this duty devolved upon Canadian banks, only one of our financial institutions has given up the ghost.

The work of the association and the duties devolving upon it have been well defined by the present Canadian Minister of Finance, who has referred to the Canadian Bankers' Association as an "annex" of the finance department. Our banks remain strictly outside the arena of politics, and are not looked upon with suspicion or dislike by the people or by Parliament. Both realize that a sound banking system is conducive to the prosperity of a country, and both are equally interested in granting to the banks such privileges as will be conducive to their safety and to that of their clients. To travel round the world in our times with a single story, even if generally admitted to be a good one, would be dangerous. In these days of rapid transit the best rendition of some humorous incident may become old in a day, and it is, therefore, advisable to preface a story with a careful enquiry as to whether your audience has "heard it before." I know that what I may say to you about the currency botheration has been heard by you before, and that it has been said much better by others. It may be interesting and incidentally displeasing to some of you to know what Canada, the "Spoiled Child of the Empire to the North," thinks of some questions of interest to her neighbours in the South.

In speaking of the country of my adoption as a spoiled child, I am using the words of a United States senator.

Of course, post-prandial pleasantries exchanged between guests at a dinner will hardly be regarded by sensible people as a reason for display of resentful anger at the breakfast table on the following morning. Yet, about four years ago, an international quarrel was almost precipitated by an after-dinner speech.

No one will believe that Senator Chauncey Depew would intentionally say or do anything contrary to good manners, especially when being entertained at dinner. Even dull, inactive listeners are said to have found the wit of your breezy countryman exhilarating, and the few particulars which flitted westward across the summer seas of a little contretemps at a Pilgrims' dinner held in London in 1902 sustain his reputation.

After dining as gentlemen should dine—wisely, but not too well—drinking the, usual loyal and patriotic toasts in "Scotch and Radnor," rather than in frothy goblets of soulless champagne, the Pilgrims naturally expected to hear a funny story or some humorous remarks from a raconteur of such repute as Senator Depew. Well, it seems he selected as a subject to talk about the suppositious affection felt by all good Americans for Great Britain. The representative of a former British colony incidentally made a pragmatic reference to

Canada, and dubbed her the "Spoiled Child of the Empire to the North."

Sir Gilbert Parker, the Canadian novelist, was present at the dinner, and his supersensitive soul seems to have been shocked by American senatorial audacity. He could not stay silent while the land of the beaver and the maple leaf was subjected to slight or treated with contumely. However, cooler Canadians failed to find that Senator Depew's conduct was marked by circumstances of peculiar atrocity and they refused to get angry. The Senator had not transgressed against modern usage by falling asleep in his chair and slipping from thence under the table. He had simply found a new name for my country, and I am not all sure that I do not prefer to think of Canada as the "Spoiled Child of the Empire to the North," rather than as Kipling's "Lady of the Snows." Her people do not regret that Canada is as she is. We are glad to find that both Great Britain and the United States are beginning to notice the growth of the lusty child in high latitudes. Instead of uttering a reprobation of Senator Depew's remarks, it would perhaps have been better had the ruffled Canadian knight and novelist been content with a fair and honourable exchange of after-dinner pleasantries. Then the two gentlemen who created this unnecessary flutter could have soothed their troubled tempers and stomachs with some peat reek and retired amicably to bed.

Canada is attracting attention from others of your countrymen besides the silver-tongued senator. There is a steady stream of your people into our western terriority, a sign of a growing, even if greedy, admiration for the broad wheat lands, great woods and ranges of hills of a country of which it may be truthfully said that nowhere can be found a happier union between the fertility of nature and the industry of man.

Having said what I think of the "Spoiled Child of the Empire to the North," allow me, upon your own invitation, to say what I think of the question assigned to me by your association, viz: United States banking and currency and that sort of thing.

The secretary of your association in requesting my presence at St. Louis, informed me that if I could find anything funny in your difficulties no one would object to the discovery. But I have too much respect for your members to ridicule any ailment you say you suffer from. I say "say" advisedly, for it seems to me so singular that such an intensely practical people can be unable to devise a remedy for an intermittent strangulated currency. I do not wish to be as flippant, when alluding to your monetary woes, as the editor of a society paper who was written to by a fair contributor who wanted to know what she should do with a wrinkle in her forehead. In the absence of the head of the beauty department, the worried editor said to his stenographer: "Tell her to putty it up and forget it." Yet, when your alleged troubles—the wrinkles on the financial forehead—are viewed through my glasses, their presence is incomprehensible to me.

As the editor of a quarterly magazine, the official organ of the Canadian Bankers Association, which, as I have said, is incorporated by Act of Parliament and entrusted with the supervision of the currency issued by the chartered banks of the Dominion, I naturally read your financial papers. Let me admit to my confreres of the United States financial press that, when short of matter, I delight in indulging in a friendly, good-natured fling at the inability of our practical neighbours to find a way out of what they are pleased to call "the currency trouble." From perusal of the financial papers referred to, I find that your bankers chat about the currency, speculate upon it, and pass the silly season, when not too busy, in deriding the efforts of those who dare to advocate any change not in accordance with the conflicting opinions entertained by their fellow bankers. In saying this, I am only "thinking aloud." Excuse my temerity in addressing such a distinguished body of bankers in the language of truth.

The gentlemen of the State of New York with whom I dined, wisely and well, at Bluff Point in July last, may recall the address delivered at their convention by Mr. Vanderlip. His subject was "The Currency." I listened with closer attention than many of those to whom this subject seems to be as puzzling as a Chinese laundry bill. At the close of the reading of Mr. Vanderlip's paper I was asked by a representative of the Associated Press for an expression of opinion thereon. The excessive hospitality of my New York friends during my all too short sojourn at Bluff Point had put me in the mood to express opinions upon any and every subject, whether relating to the United States, Peru or Madagascar. I, therefore, expressed an opinion but have not yet seen it in print. It may have been regarded as unfit for publication, expressing as it did my shocked surprise to find that the most practical people on earth permit politics to block the way when they are wrestling with a currency or any other problem. Mr. Vanderlip reiterated what your bankers have been saying for years and years. He was quite eloquent in his picture illustrating the evils of having undue accumulations of currency at financial centres, and pathetic in regret that your banking system has not been permitted to develop so as to keep pace with the growth of the work entailed upon it. You have asked me to talk to you like a mother with a sick child, and with maternal solicitude for your welfare. Then let me venture to say what this currency botheration looks like to me. Here is a quotation from Mr. Vanderlip's address upon the question under consideration, and I have yet to see a suggestion in any financial paper that Mr. Vanderlip's utterances are not worthy of the most careful consideration:

"New York is the financial centre. New York bankers ought to accept the financial leadership. They ought to have well considered opinions upon the currency. The financial portion of the whole country looks to New York leadership. For New Yorkers to say that anything practical in the way of suggestions must, for political reasons, come from some other quarter, is but a cheap way of escaping responsibility. For the financial leaders of New York to say that the popular prejudice against Wall street is so great as to prevent their voices being effectively heard, and that it is useless for them to devote thought to a problem the solution of which must, for political exigencies, come from some other place, is to offer but lame excuses for failure to do their duty.

"I believe there is little force in these protestations behind which New York bankers modestly step into the background. Their proper place is at the front in a currency discussion. Financial leaders should be leaders in fact; although in truth not a few of them have given less earnest consideration to the great national question of the currency than they have to any one of dozens of corporate underwritings or reorganizations."

Then, having thus scolded his fellow-bankers for their inability to influence the public opinion of this country on financial matters, and having told you that the main trouble can be found in the fact that you have no well-considered conclusions, Mr. Vanderlip said:

"The thing which I am absolutely certain, however, is that a solution of the whole problem could be obtained wisely, promptly and easily if bankers would give to a consideration of the subject anything like the attention which it merits. And again I say the responsibility is on the bankers of New York. You cannot shift the responsibility to the shoulders of your associates in the West. You are the financial leaders and the responsibility is yours."

You will reasonably infer from my remarks that I look upon the conditions in Canada in banking and currency matters with complacent satisfaction. I do. It is one of the happiest characteristics of the peculiarly happy country to the north that its Government recognizes that the bankers themselves know what is best for the financial and commercial interests of the Dominion, and consequently whenever the bank act of Canada is being revised the bankers are consulted upon any and every contemplated change therein.

The banks trust the people, the people trust the banks, and the Government, wisely, most of us think, grants every reasonable privilege to insure the stability of the banks and thereby to promote the prosperity of the country.

Upon Canadian banking and the currency system it is not necessary for me to dilate. Many of you have heard Mr. B. E. Walker, the gifted general manger of the Canadian Bank of Commerce, explain the banking system of Canada. With voice and pen he has done much to make known the mechanism of Canadian banking, and he has shown your people what to admire therein. In some of his papers, of course, he has not been able to avoid a comparison with this great country, where, as Mr. Walker says, "banking systems are being keenly discussed and where it is admitted that changes and perhaps radical ones are necessary." In a comparison made of the banking of the two countries as far back as 1893, Mr. Walker robbed his reference to the banking system of the United States of any offensiveness by admitting that "a cherished dogma of one country might be rank heresy in another." In a paper read before the congress of bankers of Chicago in 1893, Mr. Walker said:

"In contending for the comparative perfection of the

Canadian system, I do not wish to be understood as asserting that the points of superiority in our system could be adopted here. For over half a century banking in the United States has been following lines of development opposed in many respects to the Canadian system, and it may well be that no matter how desirable, it is too late to adopt our practices."

Lacking the modesty of Mr. Walker, I say "It is never too late to mend."

I have tried to think aloud in your presence on the subject entrusted to me. It seems to me that the appointment of a committee to deal with a question which has been bothering your bankers for so many years ought to result in action rather than in further long drawn out discussions. Or is it possible that you have become so accustomed to facing the prospect of a currency famine that you will find compensation in talking about it rather than in taking action to have it wiped out. Why give thought to personal interests or political significance? If the trouble is national, it should be dealt with in a broad national spirit. The suggestion that you revel in a disordered currency system reminds me of one of the clever distichs of the late Colonel John Hay, viz.: "The pleasure of scratching almost compensates one for having the itch."

Your currency botheration was looked at through Canadian glasses at Chicago in 1893, and a delicate reference made to it in Mr. Walker's masterly address * * * Thirteen years have elapsed and you are still bothered. * * * Comment is unnecessary. * * * I have seen a boy after a prolonged fit of weeping stop to survey his miserable face in the glass. Apparently he found pleasure in this singular perfomance, as he immediately commenced to cry again, in preference to wiping his face and examining the source of his sorrow with a view to its removal.

Pardon me for venturing to meddle, even upon your own invitation, in matters which concern me not. On behalf of a sister association I thank you for the opportunity of meeting members of the American Bankers Association. Knowing that you have a special committee working upon a scheme of currency reform I have purposely refrained from submitting any alternative plan, but if you really require advice or assistance from Canadian bankers it is only necessary to whisper your wishes to me.

JOHN T. P. KNIGHT.

17✓

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JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

VOL. XIV.] APRIL, 1907. [Number 3

CONTENTS

PAGE
EDITORIALS 193
THE MAGIC OF THE MINE 204
COMMERCIAL CRISES 214
LECTURES ON THE BANK ACT 232
THE CANADIAN BANKING SYSTEM 257
SOCIAL READJUSTMENTS 269
FORMATION OF CONTRACT 275
QUESTIONS ON POINTS OF PRACTICAL INTEREST 287

MONTREAL:
THE GAZETTE PRINTING COMPANY
1907

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VOL. XIV.] [Number 3

JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

APRIL, 1907

EDITORIAL NOTES

Yes—yes—Pelang, mon cher garcon!
I t'ink of you, t'ink of you night an' day,
Don't mak' no difference seems to me
How long de tam you was gone away.
(The Habitant.)

In Memoriam.

It is singular that the large majority of mankind seem to think it impossible that Death can seize a beloved object. Goethe, in commenting upon the strangeness of death in that it withstands all experience, said: "It always presents itself as an incredible and unexpected event; and this transition from an existence we know to one of which we know nothing, is something so violent that it cannot take place without the greatest shock to survivors."

The news of the death of Doctor Drummond came to his thousands of friends as an incredible and unexpected event. But fortunately his books, "the chosen depositories of the thoughts, the opinions, and the aspirations of mighty intellects," remain to remind all thoughtful Canadians of the kindly soul that has passed away.

The army of acquaintances and admirers of Doctor Drummond mourn him as a man of beautiful thoughts and bright fancies, whose constant cheerfulness and readiness to "play the game" betokened a contented spirit.

In the author of The Habitant, cheerfulness implied a pure heart and a kind and loving disposition. For the recollection of his humility and charity, and his generous appreciation of the French Canadian, we hold Dr. Drummond in our love and honour, and are tender of the fame he well deserves.

Banker and Student.

The advocates of higher education for bank officials will find something to please them in connection with an article, "The Canadian Banking System," published in this number of the JOURNAL. The writer of the essay in question, Mr. A. H. M. Hay, has proved the possibility of remaining a student even after undertaking the daily work of a bank clerk. Being interested in Mr. Hay's efforts to obtain his college degree, the editor of the JOURNAL requested permission to publish the article. Modestly disclaiming any merit for his good work, Mr. Hay, when forwarding his thesis, wrote as follows:

"The essay in question is part of the work I have been doing for upwards of a year to the end of obtaining the degree of M.A. from Acadia University, Wolfville, N.S. The work has consisted of a course of study in Economics, covering some twelve books prescribed by the University Faculty, on all of which (with the exception of three books) examinations have been passed. I hope to complete the course in time to obtain the degree in June of the present year.

When writing the article referred to I did not have in mind even the possibility of its publication in your JOURNAL; and hence was not addressing myself to men *entirely familiar* with banking questions. I trust that this fact will tend to soften the criticism which your readers will no doubt be inclined to accord me, if, indeed, my article succeed in interesting them to that extent. Had I been writing to Bankers my article would perhaps have taken a slightly different form, at least in some of its parts."

Is it too much to hope that this good example of determination on the part of a young bank official to improve his mental equipment for life's struggle may prove an incentive to others?

The Imperial Conference.

It has been made a matter for adverse criticism by over-ardent imperialists that Canada has not contributed any of the new topics to be taken up in the conference of Colonial premiers in London this year. Is it not rather a matter for congratulation that Canada can appear at the conference with no grievance to air? The debates will certainly afford opportunity for Canada's representatives to aid by discussion or suggestion in the settlement of the important questions to be laid before the delegates. But the situation renders impossible the return of our ministers sore with the rejection of cherished proposals; or elated with the approval which they may have won for their projects from other colonial representatives, but suspicious of the attitude of the Mother Country. Had Canada, indeed, any real reason for seeking changed relations with the Imperial authorities, fear of a rebuff should not restrain her from voicing her desires. We may rejoice that we have nothing to ask which we do not expect to get without asking, so far as it appears a thing proper to require; and that we are assured of a contented return for our delegates. They may not win triumphs, but they will be free from heart burnings.

Colonial Mutual Preference.

If we cared to criticise the suggestions of less contented sister colonies, we might be tempted to comment on the fact that there is brought forward from Australia a proposal for mutual preferential trade between all the outlying parts of the Empire. There is one step which might be taken, quite independent of the Imperial Conference, towards the realisation of this ideal, by the proposer of the resolution. Canada has long been ready to establish a mutual preferential arrangement with Australia. It only needs appropriate action from the sister colony to ensure the completion of the arrangement. We need not wonder that Canada did not consider it necessary to put forward such a proposition at the Conference, though we may wonder whether action on the part of our Australian cousins might not afford a clearer proof of devotion to the principle involved than its discussion by them in England.

An Elective Governor General.

One of our most patriotic citizens has recently suggested that it would be advantageous to Canada to secure the right of selecting her own Governor-General. We do not propose to dilate on the pros and cons of this suggestion. But there is one point in relation to it which may be worth consideration. At present, the Governor-General can hardly be said to possess other power to mould Canadian policies and legislation than such as he may derive from the respect which his high personal qualities command. In real power to override the party in office, our Governor-General has not more, and may even, without reflection on any of the illustrious men who have held the post, be said to have considerably less power than can be exercised in England by the King. Now, if we elected our executive head, he would inevitably acquire no small power to mould the policy of the Government. It may be doubted whether thoughtful Canadians would care to see the Governor-General exercising here the power of a President of the United States. Is it not vastly preferable to have the real executive power under the control of the popular assembly, which, should it fail to adjust itself to the desires of the nation, can be replaced by another without affecting our relations with the Imperial authorities?

Corporations and Politics.

A common but shallow complaint is often voiced by the officers of corporations that these bodies are taxed without having the privilege of a voice in controlling the expenditure and distribution of taxes. This view embodies the very common confusion that taxes are paid by property. It is true that taxes are assessed on property in many cases, but all taxes are paid by persons. The amount paid has reference to the value of property, and the profits derived from ownership of that property afford the funds with which to meet the tax-collector's demands. But payment is a burden on persons, not on things. And these persons have a full opportunity for influencing elections by their votes and work and their private subscriptions. If, as citizens, they approve a policy which affects adversely their interests as owners of shares in corporations, they have at least the opportunity of balancing the prospective loss in the one capacity against advantages anticipated in the other. Corporations can influence political action if they can arouse their shareholders to a consciousness of their interests as shareholders. But the awakening of an active and intelligent interest in the operations of the directors is not what many controllers of corporations desire on the part of shareholders. Managers whose personal interests are entirely in accord with those of the shareholders as such need not fear to arouse the active interest of the latter in defence of the corporation. Shareholders may then either support or oppose the party whose action is expected to affect corporate interests unfavourably. If the former, they may influence the nature of their party's activities. If the latter they may oppose the measures they fear, and the party which proposes to put them into effect. Contributions to party funds by corporations may often be innocent of all evil intent, but they are open to suspicion. Citizenship is a personal matter and taxation is a personal matter. Political subcriptions should also be a personal matter.

A Point in Handwriting.

In the December issue of the *Journal of the Institute of Bankers*, of London, the opinion of Sir John Paget is given on a question relating to an endorsement of cheques or drafts in oriental characters (as Hebrew, Aramaic or Hindustani). One sentence of this opinion reads as follows:—

"I think a Court would hold that payment on such an endorsement without verification was not in the ordinary legitimate course of business within Sec. 60, was negligence within Sec 80, and if, by a possibility the case came under the Stamp Act, 1853, Sec. 19, *that hieroglyphics, conveying nothing to the banker's mind, could not purport to be a signature.*" (The italics are ours.)

Attention to the last fifteen words of this clause might lead us a good deal beyond the scope of the question to which Sir John was directing his answer, but we are tempted to ask whether a strict interpretation of this opinion might not involve the establishment of numerous schools of handwriting in all business centres. Whatever it may really mean, it would be well for young men entering banking or business offices to be impressed with the dictum, so far as concerns their own writing capacities.

The Oldest Bank.

That the oldest bank in the world should be an Italian institution seems natural. Nearly all the famous banks of the Italian cities have passed out of existence. The State Bank of Venice, the earliest of modern credit institutions, founded in 1171, has passed away. The famous Bank of St. George, founded at Genoa in 1407 ceased to exist over a century ago. The Bank of Naples dates from 1539. It is an institution of a public character, without proprietors, whether shareholders or others, but possessed of a substantial capital, increasing as profits accumulate. The managers are thus happily free from questions of maintaining or increasing the dividend, and are not harassed by the need of supporting the market quotations of their stock. The Bank is one of the note-issuing institutions of Italy, ranking in importance in this regard next after the National Bank.

Labor Union Exclusiveness.

It is interesting to note that the policies which many modern labour unions adopt, including their practical refusal to recognise the right of non-members to earn a livelihood in their trade, are not devices invented in recent times or with reference to conditions of current business. At the beginning of the reign of Edward VI, in 1548, we find that it was necessary to make statutory provision, "for restraining the sellers of all manner of provisions in England from combining together, not to sell, but at a fixed price, and also for restraining workmen and labourers not to make or do their works but at certain hours," and further "licensing all manner of workmen relating to building of houses, etc., to follow their occupations in all cities and towns corporate, although they did not live therein, or were free of such corporations." The terms of this last enactment imply, what was the fact, that in the towns of that time, all non-residents who were not citizens were excluded from the skilled crafts. The grant of freedom to compete with themselves was as obnoxious to the craftsmen of that time as it is to their successors to-day, and the Act was repealed the very next year at the instance of the city of London. The repealing statute states on behalf of the artificers and craftsmen of London "that if foreigners (i.e. non-freemen) should come and work among them, within the liberties of the said city, contrary to their ancient privileges, the same should be a great decay of cunning, and an impoverishment and driving away of the freemen, being artificers of the crafts, arts, and mysteries aforesaid within the said city of London, to the great hurt and destruction of the said city." All corporate towns shared with London the effects of the repeal, and not till the mechanical inventions were introduced which revolutionized the methods of industry did circumstances override the exclusiveness of the craft organizations. Meanwhile industry grew, but not always in its old locations. To escape the stifling effect of the narrow restrictions of the gilds, industry avoided the corporate towns to a large extent, and grew where the gild regulations did not choke development. The spread of the modern union policy of excluding non-unionists from all possible opportunities of work may prove to be as suicidal as was the corresponding policy of their ancestors.

Bankers and Customers.

Some points of fundamental importance were emphasized in an address which Mr. B. E. Walker delivered a couple of years ago to an association of American bankers, and which has since been issued in pamphlet form. He urged that sound banking calls for consideration of the needs and circumstances of customers as much as it demands attention to immediate chances of profit. Not to lend injudiciously, even when funds are plethoric, is a principle of obvious soundness. To lend to customers whose circumstances justify it, even though other opportunities offer in which profits might be greater for the time being, demands more restraint and a capacity for realising the future clearly. But to aid customers in the development of sound business is more to the ultimate benefit of the banker than to snatch a momentarily higher profit. The modern spirit demands of all social arrangements, as Mr.Haldane said he had asked of each part of the British army organisation, what service they are rendering; and if they are rendering it more effectively than any substituted system could be expected to do. As an institution, banking can challenge such an inquiry without the smallest fear of condemnation.

The World's Money Centre.

Writing in the New York *Times,* Mr. Edgar Speyer discusses the place of New York in the international money market. The need for capital in the United States has, in late years at least, outrun the capacity of the country to supply itself. The surplus capital available for investment in other countries, need not be sought at a centre where there is no such surplus. If American borrowers will use all the available supplies and pay a higher price than foreigners are willing to pay these latter will not resort to America for loans. Something like this appears to have been the case of late years, and so long as it continues, New York cannot compete with London and Paris and Berlin as an internationl money provider. Its assumption of this rôle must be postponed, and without this New York cannot attain to the dominant place in the money markets of the world. The argument appears to contain much sound common sense.

For some years it has been clear that the steady reduction of the yield on gilt edged investments has come to an end, and given place to a higher range of earning power for capital.

The Strain on Capital.

More rapidly and thoroughly, and on a greater scale, than ever before, the resources of the world are being exploited in our time. New modes of appropriating to human needs the wealth of nature's stores are resulting from the advances in scientific knowledge. All these developments need capital, many of them capital in new forms and combinations. Thus the field for the profitable use of capital is, for a while, enlarged. War and earthquake, fire and extravagant living, have impeded the growth of the supplies of capital in the same degree as the demand. Hence a higher level of earnings for new capital in all forms. And with a higher level of earnings, capital values need to be scaled down to correspond to the new basis of capitalization. The scaling-down process is disagreeable and painful. Recent episodes in the stock markets have marked stages in the necessary readjustment of values. Let us hope that the progress of revaluation will not spread ruin in industrial and commercial life, as well as among stock-gamblers.

It will come as a surprise to many who are not personally acquainted with the facts of the case, to learn that, till the 19th of February last the outlying banks of the world's metropolis collected cheques in the old-fashioned way, by a peripatetic messenger. Even though this new method of clearing has not become all-embracing, so far as it extends, the collection of cheques on branches of other banks in the suburban districts affected will give way to the collection of those on each bank's own branches. The cheques received by branches will be presented, through the head office, at a special 'Metropolitan' clearing. The branches on which they are drawn will receive from their own head offices, by the hand of one messenger, the cheques which have hitherto been presented by numerous messengers from other banks. To facilitate the operations connected with the clearing, cheques of clearing

Modernising London's Clearing.

bankers will bear a special mark. Those drawn on country banks will have a 'C' in a circle in the left-hand bottom corner. The Metropolitan cheques will be marked by an 'M' in a square, and the Town cheques by a 'T' in an inverted triangle. Every banking office in the country will be classified in one of the three groups. These markings will greatly facilitate the sorting of cheques in preparing them for presentation at the Clearing House. Trial of the new plan is to be made for six months, by which time any defects of detail will become clear, and it may be hoped that the West End and Smithfield bankers, not now included in the system, will by that time be ready to give in their adhesion to the new method of procedure.

Contents.

In this number of the JOURNAL will be found another article from the pen of Mr. John S. Lewis, Jr. The writer of "Social Readjustments" does not hesitate to clothe some burning thoughts in forceful language. The interest of Mr. Lewis in the destiny of his adopted country cannot be doubted, and his moralizing contains a warning to Canadians to avoid the political and social corruption which that well known American student of economic problems, Ida Tarbell, claims to have found resting as a blight upon the United States.

The "sturdy young people whose avowed mission is the conquest of the Twentieth Century" will be none the worse if they heed the warning words of the writer of Social Readjustments.

The description of mining in Mexico from the pen of Mr. A. R. Doble makes an extremely interesting story. The author of "The Magic of the Mine" when on his business missions to Mexico can evidently absorb all that he observes, and he is fortunate in the possession of the uncommon gift of narration.

Mr. Doble will have no trouble in inducing his readers to follow him and the mineral of which he treats in his interesting article, "from the stope to the crucible."

Uniform Bill of Lading.

The Board of Railway Commissioners of Canada have under consideration a draft of terms and conditions of carriage of goods by railway companies. The Boards of Trade throughout the Dominion have been requested by the Commissioners to forward any representations in regard thereto, and the shipper or owner of goods is thus given an opportunity to protect his interests.

Incidentally, the Canadian Bankers' Association has the proposed uniform bill of lading under consideration for the purpose of assisting shippers in securing such a contract with the transportation companies as will be in all respects reasonable and fair.

To one clause of the draft of terms and conditions submitted by the railways to the Commissioners at Ottawa there is likely to be strong opposition, namely, the transfer of liability when a railway company has given to the shipper a through bill of lading. The editor of this Journal is in receipt of a letter from a Toronto barrister who, in referring to this condition in the contract as proposed by the railways, says:

"It does not seem right that a shipper in Halifax making a contract with the Intercolonial for the delivery of goods at Dawson on through Bills of Lading and a through rate, should be required to seek redress in the event of loss of goods against some obscure driver of a dog-sled in the Yukon District."

THE MAGIC OF THE MINE.

A. R. DOBLE.

> "But when the precious metals were found in lead and copper by the action of powerful re-agents, it was natural to suppose that they had been actually formed during the process, and men of well-regulated minds even might have thus been led to embărk in new adventures to procure a more copious supply, without any insult being offered to sober reason or any injury inflicted on sound morality."—Sir D. Brewster's Martyrs of Science.

Most of us think that we know something about gold mining, many of us have gathered valuable information concerning the industry from the advertising columns of the daily newspapers (from which source there is much to be gleaned from current copies), and not a few of us have exchanged pretty Canadian bank notes for equally artistic, but alas, less realizable stock certificates. It is further generally known that there are various ways of separating the precious metal from its mother earth, and some again have discovered that there are various ways of separating the sons of earth from their precious metal. Rare sages there are who have wisely concluded that rivers running over sands of gold do not very generally exist this side of Jordan, and that in any case the difficulty of reaching those alluring streams is hardly less hazardous than that of navigating the mysterious flood aforesaid, and safely landing on the shining shore. But it is a subject in which all are interested, and especially we of that fraternity which handles so much and retains so little of the coin of the realm. This, then, is my reason for asking you to accompany me into the bowels of the earth, and to follow the ore from the stope to the crucible. In an unscientific and non-technical way, I shall attempt to show you the magic of the mine, and when I have finished you must take it all with "E & O. E." as your grain of salt. And, as we are to go below ground, you will give up your visions of rivers and sands and gravelly hills bearing gold, with their simple processes of "panning" and "sluicing," and follow me. Here then, if you please, is the great mining camp of El Oro, in the Republic of Mexico, the distance some eighty miles from the city of that name, the altitude 10,000 feet above the sea. At that elevation, we shall find it uncomfortable to do much climbing or walking, therefore let us take a seat on this neat little electric locomotive which will whizz us into the heart of the mine in no time. Keep your head low, live wire overhead! The current on that wire, the motive power which is running the locomotive, lighting the mine, operating the pumps, air compressors, hoists, stamps and other machinery to the extent of 3,000 horse power, is being generated 165 miles away. After travelling a mile we reach the vein, and alighting, follow the workings towards the stopes. We crawl over a mass of debris, the space just sufficient to allow us to wriggle our bodies through, and, *en passant,* we wonder what would happen if the roof should cave in and seal up that narrow outlet to the outer world. But a mine is no place for nervous people, and we assure ourselves that we are not a bit nervous, and, the going being quite as good as St. James Street, Montreal, in early April, we stumble on. We turn and twist about as the tunnel follows the vein, we dodge a few carloads of ore flying down a chute here and there, and presently come to a neat little electric power station, occupying a chamber hollowed out of the rock. Here we find a motor operating a pump, and here one of our party is told by the engineer in charge that his office in Mexico City wants him on the telephone. It is a new sensation this telephoning from the 1,200 ft. level, but it works satisfactorily enough, the connection being made over the Power Company's private line carried on their transmission poles. We feel like telling them not to let the "juice" give out, and put out the lights, and stop the pumps and the air compressor and the other little conveniences which we feel are rather vital to us at present, but we renew our assurance as to our nerves, and inspect the plant nonchalantly.

Proceeding on our journey we arrive at the foot of a shaft where the mine captain enquires whether any blasting is going on above. He is answered in the negative, but the query makes us cautious (not nervous), and we step a bit gingerly so as to avoid sticks of dynamite, having heard of the proverbial carelessness of miners. Climbing a few ladders we reach our destination, the stope. Here, in the electric light, we find a score of perspiring, naked peons (we wonder whether these are the "swart faeries of the mine" whereof Milton writes) with pick and drill getting at the ore. We are allowed to chop out a sample for ourselves, and are told that this is a rich working. No need to tell us, we can see the richness gleaming in the lump we hold. It is then that we learn that all that glitters isn't gold, in fact that all the glitter is caused by oxides and that the ore is impregnated with the metal in such fine particles as to be quite invisible. But we must hurry away, we find that there *is* going to be some blasting, and the holes which have just been made by the drill are now to be filled with dynamite. As, therefore, we are not nervous but thirsty, we retrace our steps and finding the locomotive now coupled to a train of ore-laden cars, we are soon in the white glare of the February noon-day sun, breathing the pure fresh air once more. But our little engine carries us, with its, we trust, less precious freight, out of the sunshine into the noise of the great mill, and here we stop, each car before a rock crusher. This machine, its type varying in different mines, crushes the ore as it is dumped from the cars, to a size which can be conveniently handled by the stamps, to which it is conveyed on an endless india-rubber belt or some similar appliance.

The coarse product is fed to the stamps, each one in the form a huge pestle which pounds the ore into a sand. And it is here that the "cyanide process" begins, and with it, the "magical" part of my story.

* * * *

The easiest way of obtaining natural gold, failing the ownership of an "auri-oviparous" goose, is to pick it up in nuggets, but in this form the precious metal has seldom been found elsewhere than in Australia. In other parts of the world nature has usually hidden her treasure in her bosom. Sometimes she secretes it in shallow diggings, or placers, where it can be extracted by the simple processes of panning or rocking. Sometimes she has concealed it insecurely in gravelly hills where her elemental earth yields it readily at the command of her elemental water. Sometimes merely a chance outcrop has told a tale of veins and pockets and reefs of ore running thousands of feet below the surface, accessible only with much labour and many tears. Such is the El Oro camp, but there, even when the ore is brought to the surface, it submits to no easy method of extraction, rarely to smelting or concentration, but only to the magic touch of chemistry.

Here is the secret of the "Cyanide Process" as given by Miller in his manual on the subject:—"A dilute solution of potassium cyanide dissolves gold and silver contained in crushed ore, and, with some exceptions, does not attack, to a large degree (during the time necessary to dissolve a large percentage of the gold) any of the other constituents of the ore. The gold and silver are then precipitated from the solution, and, after proper treatment, cast into bars." While the essential principle of the process has been known for over a hundred years, it has been applied commercially only during the last fifteen; originally in South Africa.

In our excursion through the mine we had reached the stamp mill, surely the noisiest place in all the world. For here 120 stamps stand in a row each looking like a huge steel pestle, which in effect it is. Every pestle, weighing some 2,000 lbs., rises and falls nearly one hundred times a minute and crushes the ore against a die. Day and night, week in, week out, they pound away, only stopping at rare intervals, when "something goes wrong with the works," and the din is terrific, a word shouted in the ear can scarcely be heard. In a building adjoining the stamps may be seen, idle and inert, the great steam engines which once ran the mill, the pumps, the air compressors and the hoists, and in a corner of the same room is the electric motor, so small and quiet in comparison, doing all and much more than the vanquished steam, and doing it far more effectively and economically. Indeed, electricity has been the salvation of some of the mines, for before its advent the higher grade ore had given out and the low grade did not pay for treatment under steam power.

To return to the mill; the ore, stamped to a powder, is passed by water through a fine-mesh screen, and over an inclined table which is given a sort of sifting motion. On this table the mixture, flowing in a thin sheet, is separated into sand and slime, which each require distinct treatment. The coarser product having failed to pass through the screen goes into a tube mill, to be reground. These tube mills are long boiler-like cylinders, filled with pebbles, the hardest known, brought all the way from Iceland. The cylinders are revolved and the pebbles slowly grind the ore to the requisite fineness. Like " the mills of God, they grind slowly yet they grind exceeding small ". The sand and slimes each flow into huge vats filled with the cyanide solution, which, as already indicated, has a wonderful liking or affinity for gold. For days the sand and slimes are agitated, each in an appropriate manner, until the cyanide has had opportunity to eat out every golden particle. In the case of the sand, great paddles revolve within the tank, constantly stirring the contents, until finally the cyanide, with the gold in solution, filters off, while the sand, despoiled of its gold, is conveyed to the tailing dumps. The slimes, after their agitation are allowed to settle and the clear solution is decanted.

Now for the miracle. The cyanide flows, by gravity (for these plants are constructed on a hill side, and each step in the process takes place at a lower level than the preceding one) into the refinery. At the outset, I told you only part of the secret. For here we have tons of liquid, clear as the greenest ocean, containing pounds of gold, but in an intangible, invisible form. How is it to be reached? How is that chemical, deadly poison that it is, to be made to disgorge? Well, there is one substance which it likes better than gold, and for which it will give up all its gold to obtain, and that substance is zinc. Into boxes, three or four feet square, the cyanide passes, and into those boxes are thrown zinc shavings, all that the cyanide will absorb. Gradually the zinc disappears, the cyanide, glutted with the base metal, flows off, to be pumped into storage tanks for use over again, and in the bottom of the precipitation boxes remains a dark muddy-looking deposit. But that same dirty mass is almost pure gold, waiting to be dried and fluxed and put into the melting pot. The furnace is in yonder corner. Watch the glowing crucible, raised from its fiery bed. See the livid, molten mass, poured by means of long tongs into the mould. And when cooled there is the visible yellow metal, so recently buried in the heart of the mountain, imperceptible in the solid ore, invisible in the liquid chemical, by the magic of the chemist made ready for the minter and the goldsmith. But though they impress it with a symbol which shall procure for you and me the necessities, and let us hope also the comforts and luxuries of life, though they spin it into a fairy thread to make rich the vestment of the priest, or fashion it into a diadem for a royal brow, they shall work no wonder equal to that which gave it birth, a wonder scarcely less amazing than than of our own coming into being.

But, as they say in Siberia, "Back to the Mines!", lest I forget that I am not conducting a balloon excursion. To return then to the refinery, we notice that most of the labour here (as indeed throughout the mine and mill) is performed by the native peon. The superintendents and higher officials are generally Englishmen or Americans, often Canadians, the Electrical Superintendent of one large mine being a Montrealer. As the Mexican peons have the reputation of being very able and artistic purloiners, the management of the mines take measures to prevent the abstraction of their valuable product. Therefore, when the workmen enter the refinery, they change all their clothes and don the uniform provided by the company. When their day's work is done they take off the uniform and the hose is turned on them. The waste water is not wasted, but is run through the cyanide plant. The ears, nose and mouth are examined, and as a final precaution the operatives are made to step across a broad-guage line where their own clothes are given to them. The cleanliness thus enforced upon the men is probably offset by a less frequent use of water on the part of the women of the family, for, when passing through the mining villages in the afternoon, we noticed the ladies sitting on the doorsteps most industriously going over one another's hair!

And now my reader, having brought you back to earth again, I invite you to go underground once more, just for a few minutes. We enter, on foot and holding candles, a tunnel, and after following a winding working a short distance we come to a great cavern. This is where a man named Borda struck a pocket of "bonanza" ore many years ago. He had nothing to go by but the general lay of the land and his own intuition, which told him that the rich vein of another mine some miles away ought to run in a certain direction. He dug a tunnel and poked around, ran little branch tunnels here and little shafts there, spent all his own money and all he could borrow, without result. Then he went into a hut of a church in the village and vowed to Our Lady that he would build her a beautiful shrine if only she would lead him to the gold which he knew lay hidden in the mountain. His prayer was heard, and the great chamber in which we stood testifies to the quantity of the deposit. Unlike some men, he kept his promise, as a large though somewhat gaudy church bears witness unto this day. We peered down some of the shafts in this mine and examined the queer "chicken ladders" which enable the miner to climb up and down. These ladders are the trunks of trees notched at intervals to give foothold. We did not essay to negotiate them. The present owners of the mine think that old Borda left a good deal of ore, valuable under modern methods, behind him, and they are going after it. It is a quaint old outfit, but we found a good Nova Scotian in charge, and he gave us the "glad hand" and a very excellent Mexican luncheon, including tortillas (maize cakes) frijoles (beans) and several other delicacies which I am unable to pronounce, much less to spell. We shall long remember the old brandy (Borda's private stock) which accompanied the coffee and cigars.

* * * *

While we are upon this mining excursion, perhaps you would like to visit the oldest mining district in Mexico, that of Pachuca, some 65 miles north east of Mexico City. Unlike the mines of El Oro, where gold is the chief product, those of Pachuca yield silver principally and some of them have been worked for over 200 years. The City of Pachuca though the Capital of a State and boasting a population of 40,000 is not an attractive place, but then mining centres rarely are. The most imposing building in the town is that owned by the Real del Monte Co., whose guests on the occasion of our visit we were. The picturesque edifice they occupy was once the seat of the Government of Mexico under Spain, and its stout walls are battlemented and loopholed for the defence which in times gone by had to be provided for a mining enterprise no less than a governmental one. On the ground floor, accessible from the flower-filled "patio" or courtyard, are the Company's offices, and above are the comfortable, not to say palatial, quarters of the Company's officers.

The history of the Real del Monte camp is interesting and romantic. Originally worked by the Spanish conquerors, the first "Real" Mine was taken over by an English Company early in the last century. It was about the time when the Cornish tin mines became unprofitable, and when so many of the followers of that industry in Cornwall turned their faces to other parts of the world. They took with them their machinery and methods, and, as an evidence of the goodness of the former, we were shown, in actual operation, a Cornish pump which has done satisfactory duty for 75 years. As in so many mines, water has always been the great difficulty in this camp, and the ruin of many a company. And although modern centrifugal pumps have solved the problem of this form of water, it is said that in these latter days mining propositions often possess a superfluity of *water* of another kind.

The English Company, having established their headquarters at the old palace, found that they required a quiet and restful spot to spend holidays and week ends, for Pachuca in those days must have been anything but a health resort. They discovered what they were looking for in a beautiful valley ten miles or so from the town, and there they built an English villa and laid out an English garden. We visited that same garden and plucked some of its February roses. It is one of those charming spots, which come upon in any part of the world, causes one to fracture the tenth commandment. Here the president established himself, and the other high officials were provided with similar delightful establishments a few miles further on, till the Company owned three such places. To give ready access to the same, a wide macadamized road was constructed all the way from town to the furthermost estate, which road is maintained by the Company tc this day. They next imported a luxurious London coach; the same vehicle, drawn by eight miles, took us over the aforesaid road. Having thus secured such of those comforts and luxuries, so dear to the English heart, as might be transplanted to a foreign land, the Company turned their attention to the mining end of their enterprise, but whether they were swamped by the preliminary expenditures or by the water which in vain they tried to rid themselves of by means of tunnels and pumps and all the then known devices, matters not, the Company went broke, and the mines, road, palace, villas, garden and coach all fell into the hands of the Mexicans who worked the mines from the middle of the last century until a little over a year ago, when they were purchased by powerful American interests.

Under the Mexican regime the silver was extracted from the ore by the "Patio process," which, though now discontinued as far as the Real group is concerned, is still worked in one or two mines in the district, although it is on the eve of complete disuse everywhere. We were fortunate enough to see it in operation, but I can not describe it any better than by quoting from Archibald Williams' interesting work entitled "The Romance of Mining" which contains an entire chapter devoted to the Real del Monte Mines:

> "Let us enter a mill and see how the Mexicans treat the ore. In a large yard boys and women are breaking up the ore with hammers. When broken, it is sorted, the useless rubbish being cast aside, and the rich portions being placed in a *molino,* which is somewhat like the mortar-crusher used on large building operations. Large circular stone rollers are drawn round and round in the trough of the *molino* by mules, until the pieces of ore have been broken up very small. The stuff is then transferred to an *arrastra,* a basin 9 to 12 feet in diameter, lined with cement. Heavy stone blocks, moved round by animal or water power, reduce it and the water which has been gradually added, to a kind of thick mud paste. The mass is next poured out on a large floor carefully paved with stones or wood and enclosed by vertical sides. After it has been allowed to dry a few days, salt is added and mules are turned in to tramp it for two or three days. Sulphate of copper, lime, and quicksilver are thrown in also, and the trampling continues for seventy more days. According to some writers the quicksilver and other chemicals rapidly destroy the hoofs and tails of the poor mules; though others say that the evil effects are small. Judging, however, by the damage done to plumbers and other workers in metal by

> metallic poisoning, we can easily understand that continous immersion in a chemical mixture such as been described might soon prove disastrous to animal tissues.
>
> " Presently the time comes when the official " tester " must decide whether the mercury of the *torta,* or paste, has been fully amalgamated with the silver. On his judgment depends perhaps, the fate of several thousands of pounds' worth of metal. He is responsible for the proportion in which chemicals must be added to secure the best results with any one *torta.* The quality of the ore varies, and the treatment must also vary according to its nature. When he gives the word, the mass is carried to an immense washing machine, driven by water, which separates and expels the dross leaving the silver-impregnated mercury. The amalgam is then retorted and cast in bars for minting or export.
>
> " Foreign capital is, of course, altering mining methods, and the *Patio* system just described will doubtless give place in the future to one more scientific. At present, however, it holds its own as being very cheap and yet effective, though tedious."

In the case of the Real Mines, the Patio process has already given way to the cyanide process, which in its application to silver varies very considerably in detail to that described in connection with the El Oro Camp.

The author whom we have just quoted seems to be uncertain as to the action of the quicksilver upon the mules, or horses—for the latter were being employed in the operation which we witnessed—but our information was that it was rather disastrous to the poor beasts. We were also assured that when an animal died it was cut open, and a ball of quicksilver was usually found in the stomach. I was rather astonished at this as I had never before heard that horses or mules had any predilection for a metallic diet. It was explained that they absorbed the substance through the pores of the skin and that following its natural tendency to consolidate in one place, it did so in the stomach!

I leave the reader with that story to digest, hoping that he will find it more easy of assimilation than the mule did the mercury.

COMMERCIAL CRISES.

I.

A. W. FLUX.

THERE are some writers who express the opinion that the subject of Commercial and Financial Crises is one of academic and historical, rather than of practical and present, interest. This view is, for example, expressed by the author of the articles on the subject in Mr. Inglis Palgrave's Dictionary of Political Economy, who writes:—

> "However remarkable the phenomena of crises may be, they are of not great permanent importance, nor are they to be regarded as an inevitable consequence of an active and enterprising conduct of business. They are really spasmodic symptoms, and not symptoms of any serious and continuous disease........ They illustrate the results of a temporary suspension of the laws which regulate the ordinary currency of a nation, when confidence between man and man is lost, but events so exceptional defy regulation, and the cure for such evils will probably be found rather in the practical good sense of men of business than in any expedients invented by ingenious law-makers."

Thus Mr. William Fowler. With his last expression of opinion it is quite possible to agree without admitting that the events in question are of so entirely exceptional a nature as suggested. Sound banking practice will probably do more to stop panics or forestall crises than the "sound laws" to the lack of which Mr. Conant, Treasurer of the Morton Trust Co., inclines to trace some evils of past crises.

Whether crises are or are not inevitable in the modern business world is a point where some difference of opinion exists. It is alleged that the coming of the trust, especially the billion dollar trust, has marked the advent of a business organization which will be able to avert crisis. As to this, an opinion will be more in order after a discussion of the characteristics of a crisis than before that discussion. Meanwhile, it may be permitted to advert to the fairly widespread conviction that no great length of time is likely to elapse before this country, this continent at least, will have to weather a storm which may deserve the name of crisis, though panic may not eventuate.

A conviction of that nature seizes on one as the long record of the past is unrolled to the view. Let me briefly indicate the features of that record which carry such a conviction. We are indebted to the late Stanley Jevons for a critical investigation running back a couple of hundred years, covering, in fact, the whole of the period when modern modes of business can be considered to have been sufficiently approximated to, to make the lessons of history applicable to such circumstances as those of our own day. Jevons finds evidence of a stock-jobbing mania as early as 1682 and again about 1692. The years 1701 and 1711 are also specially mentioned in connection with stock-jobbing. The South Sea Bubble gives us a crisis of European extent in 1721. Some evidence exists of a stock-jobbing mania in 1731-32, and periods of high prices are shown to have occurred in 1742 and 1753.

What Mr. Conant calls "the first serious credit crisis" followed immediately on the conclusion of that war which transferred Canada from French to British dominion. It is dated 1763, and of it is said, that Amsterdam and Hamburg felt it most severely, cities which had paper money in circulation, but paper which was simply deposit-receipts for coin. This may be noted in reference to alleged influences on trade inflation from too free issues of paper currency. The year 1772 or 1773 was also marked by crisis in Great Britain, and 1783 had a crisis of international character, a panic occurring in London in October of that year.

"In 1793, just before the great wars of the Revolution occurred a commercial panic so severe and genuine that it has been described as 'the first modern panic' writes Jevons. The pressure was relieved in England by the loan of exchequer bills by the government to merchants, a device which may be compared with that of Clearing House loan certificates. During the great wars, so much commercial disturbance was constantly produced that it is not easy to speak definitely of special years of crisis. After the peace of 1802 some inflation and collapse appear to have occurred, while

1805 is assigned by some writers as a year of culmination of prices and trade activity It is doubtful, in Jevons' opinion, whether 1805 can be accounted a crisis year. In 1810-11 there occurred so great a strain on business that the government of England again made advances of exchequer bonds (April 11, 1811) to merchants to assist them in tiding over their temporary difficulties After the termination of the war, prolonged agony was experienced during 1814-19, with bank failures in the United States in 1814, in England 1815-17, and strain on the Bank of France in 1818. The regularity of recurrence of crisis was, it seems, disturbed during the Napoleonic wars. Here, as in other connections, it may be said that " inter arma silent leges." We will, therefore, not try to straighten out the tangle of disturbances before 1820. Later comes a pretty regular series of crises of considerable severity; 1825, 1836-9, 1847, 1857, 1866. The sequence is disturbed by the occurrence of the next culmination in 1873. Then follow 1882 or 1883, 1890 (the Baring collapse) of which the afterclap was experienced in Australia and the United States in 1893. Can it be wondered at that many observers are led to anticipate a reversal of the tide of prosperity within no long time? Those who are fatalisticily inclined and are impressed by the long sequence of recurrence of crises at intervals of about ten years, not often greatly exceeding, though sometimes falling short of that period, are uneasy in mind when they contemplate the near future. But we must return to the analysis of the nature of crises which has been delayed by this historical survey.

Of all writers on the subject, three Manchester names stand in the front rank; those of Mr. William Langton, of Professor Jevons and of Mr. John Mills. Other writers there have been, in America and elsewhere, but one who is familiar with what was written by the three Manchester men whom I have named will not find much that is unfamiliar, unless it be the record and analysis of foreign as well as British experience, in such other writings.

I do not know if I shall add any fresh thoughts to those suggested by these writers. I may be able to apply their principles to circumstances which have changed in no small degree: to examine whether the validity of their theories has been affected by the lapse of a generation with all its new experiences. If I dwell largely on English experience, it will be because the facts have been better worked up there, and also because there we have the most extensive record of modern business, as England developed earliest in modern lines of industry and commerce. I propose to consider first the nature of a commercial crisis and the characteristic features which are to be found in every recurring crisis in spite of the extreme variety of the accompanying circumstances which tends to divert attention from those fundamental similarities. I shall then recall in order the most striking features of the most important crises in history, at any rate since the conclusion of the continental wars which disturbed the orderly progress of events during the first score of years or thereabouts of the last century. This historical survey will enable us to proceed more surely in any attempt to analyse the situation at the beginning of the twentieth century for the purpose of determining whether changes in the nature or mode of conduct of business have really made it improbable that the lessons of 1893, or 1866 or 1857 or 1847 or earlier need any special attention in the immediate future.

The general features of all crises cannot, however, be conveniently considered without a brief reference to the most prominent and characteristic facts of the several occasions of crisis, or some of them. What do we find? We find in the first place the greatest diversity of conditions on successive occasions. At the end of the Napoleonic wars, in 1815-16, the currency was one of inconvertible paper, the Bank Restriction being still in force. Ten years later, under a system of a gold standard currency with bank-notes freely issued, and on repeated occasions after 1844, when the issue of bank notes became rigidly restricted, namely in 1847 and 1857 and 1866, and, later on, in 1890, crises have supervened. Thus under inconvertible paper,—and indeed, one might go further back into history to a time of silver currency and find similar convulsions affecting business,—under free note issues and under restricted note issues, similar symptoms of disease have been developed. At one time it was common to attribute the origin of the disturbances to the condition of the currency, but the occurence of disturbances of similar general character under the most widely contrasting systems of currency would appear to imply that, even if the state of the currency be involved in the matter at all, it is not the sole or even principal exciting cause. Further, other countries, with conditions of currency differing from those of England, have not been free from disturbances of like nature—in fact a very remarkable feature of these crises is the approximate simultaneity of outbreak in different countries, in most cases.

Local conditions, temporary conditions, attract attention and are referred to as the sources of this or that particular crisis, but there is something greater and more important than such events underlying these great convulsions of the business world. It is a familiar experiment in a chemical laboratory to illustrate the strange behaviour of liquids in which some soluble substance has been dissolved in excessive amount. A vessel containing such a solution, made with hot water say, may be allowed to cool slowly and quietly. In the cooler state the solution is what is called supersaturated. But it stands quietly enough till it is disturbed. The dropping of a single crystal of the dissolved substances into the vessel, or any other like disturbance, is however, enough to entirely change the whole aspect of affairs. In a moment or so the previously clear fluid becomes a mass of beautiful crystals. A shake, a small object dropped into the clear liquid was all that was necessary to start a change of a really violent nature. A more familiar instance is that of an explosive shell or even an ordinary cartridge. A comparatively trivial action sets up a great explosion. The explosive material has been duly prepared and favourably placed and then and only then can the slight outside stimulus result in explosion.

So, too, in the business world. Events which, in the normal condition of business would pass almost unnoticed, are able, at special periods, to entail the most violent disturbances. And, further, the conditions which favour such disturbance are renewed at tolerably regular intervals of time, roughly, about every ten years. Some slight anticipation or postponement is possible, the exciting cause, the match placed to the gunpowder may be applied a little earlier or later, but only in the neighbourhood of the critical time can an explosion result from the application of the match. Such succession of critical periods is familiar enough in other phases of life. When the human frame is run down by overwork it is most susceptible to disease. Untimely agricultural operations fail in producing any result, and in other ways one could illustrate such a sequence of critical or delicate moments. The problem we have to solve is to determine, if we can, what are the symptoms of these critical seasons in business and to what causes their recurrence is due. If the latter problem cannot be fully solved, some idea of the frequency of recurrence of critical periods and perhaps of the duration of the dangerous season, may be obtainable.

For two centuries in the history of England, as I have already said, we can trace the series of periodic disturbances in the commercial life of the community. In other countries the series does not reach so far back, while some countries do not appear to experience any notable disturbances of such periodic nature. The communities in which the symptoms are most marked, where the crises have been most persistent in recurrence, most acute in their nature, are those whose trade has been most extensively developed. The foreign trade of England was extensive when America was yet quite undeveloped, and this is one of the reasons why her history reveals a longer series of such disturbances as those in question that does that of America.

But, though striking outbursts are not everywhere found, it is a remarkable fact that human affairs manifest an ebb and flow in most countries, the oscillation being in rough accord all over the world. The increasing closeness of connection of the various parts of the world which has been developed so greatly in modern times prevents any portion of it from being entirely unaffected by the events which are of great importance in other places connected with them by the links of the chain which binds together the trade of the world.

If we watch the progress of different phases of social life we shall see, as I have indicated, a tolerably regular rise and fall, increase followed by decrease to be again succeeded by increase, prosperity following on adversity and to be in its turn followed by renewed adversity. Whether we look at the movements of foreign trade, or of those items in the balance sheets of banks which are most closely connected with trade-movements, or turn to such very different figures as the records of births and marriages, or those of pauperism or of strikes or of percentages of unemployed in the ranks of the leading trade unions, or turn again to trade and consider the frequency of bankruptcy or the movements of prices, the oscillations of the figures cannot fail to impress us. There remains, however, a considerable group of figures which show but little trace of this variation, and indicate that a steady progress is maintained in spite of constantly repeated periods of adversity. The population of most civilized countries steadily increases, the yield of the British income-tax for each penny of the tax shows little mark of the oscillations of trade, and even the returns of the Bankers' Clearing Houses manifest rather the increasing volume of business settled through those houses than the variations in that volume. In the traffic returns of railways and other means of conveyance, or the tonnage of shipping afloat we have again figures which call attention rather to the gradual growth of the business of the world than to the occasional interruptions of that growth. As a result we may state the general outcome of both movements—that each succeeding wave of prosperity reaches, as a rule, a higher level than its predecessor, while the depth of adversity into which we descend, though marked strongly against the preceding prosperity, generally fails to carry us as low as was reached in earlier times of distress.

There is recognised to be, then, a regular *cycle* in commercial affairs. The progress of a credit cycle is laid down by Mr. Mills thus from the time of the panic:—

1. "The Post Panic period, marked by plethora of reserve capital, and dormancy of speculation.
2. "The Middle, or Revival period, marked by increasing trade, moderate speculation, and a sound state of credit.
3. "The Speculative period, showing inflation of Credit, high range of prices, unproductive investment, and excessive commitments; and leading to Crisis at the end of the cycle."

The whole series hinges on the varying state of credit. Hence the comparative freedom from such disturbance of countries having no great and extensive trade connections is perfectly readily intelligible. Where trade is local, markets can be more intimately known, credit can be, without overwhelming difficulty, restricted to a sound basis, and abuses of credit fail to have effects so widespread, so all-pervading.

The series of states described by Mr. Mills deserve a careful study. Let us take first his third period, the time of speculative activity which is the forerunner of crisis.

As M. Clement Juglar, a French writer on the subject, says: " No crisis breaks out like a thunderclap in fair weather. " The symptoms which precede crises are signs of great pros- " perity; enterprise and speculation of every kind will be " noticed; a rise in price of all goods, of land, of houses; a " demand from the working classes, a rise of wages, a fall in " interest, credulity on the part of the general public which, " in view of a first success, no longer entertains doubt of any- " thing; the taste for gaming, when a continuous rise is in " evidence, carries away the imagination with the desire to " become rich in a moment, as in a lottery. An increasing " luxury involves excessive expenses, which are determined, " not by actual income, but by the nominal estimate of the value " of capital at the rate quoted at the time."

The appearance of prosperity, the continuous rise in prices may be observed before each of the prominent crises in history. One might carry back the attention to 1720, the South Sea Bubble, or to 1793 with its widespread distress in America and on the continent of Europe as well as in England, but I will content myself with a reference to a somewhat later time, and direct attention to two extracts from the " Annual Register " for 1824 and 1825 respectively. The first shows the readiness of the public in 1824 to enter on new schemes for the employment of capital. It runs thus:

" The abundance of capital led to the formation of numerous joint-stock companies, directed, some of them, towards schemes of internal industry; others of them towards speculations in distant countries. The mines of Mexico was a phrase which suggested to every imagination unbounded wealth; and these companies—the *Real del Monte* Association, the United Mexican, and the Anglo-Mexican,—were formed for the purpose of extracting wealth from their bowels by English capital, machinery and skill. Similar companies were formed, in the course of the year, for working the mines of Chili, of Brazil, of Peru, and of the Provinces of the Rio de la Plata, and for prosecuting the pearl fishery on the coast of Columbia. So great was the rage for speculation, that, in the course of a very few weeks, in the early part of the year, the following undertakings, among others, were brought forward in London, and found subscriptions courting their acceptance:—The Alliance Fire and Life Insurance Company, with a capital of four millions; the Palladium Fire and Life Insurance Company, with a capital of two millions; the British Annuity Company, whose capital was three millions; the Metropolitan Investment Company, with a capital of one million; the Thames and Isis Navigation Company, with a capital of one hundred and twenty thousand pounds; an Ale Brewery Association, with a capital of two hundred thousand pounds; A Company for obtaining from the Government a grant of a million of acres of land in New South Wales, and for improving the growth of wool; an Association for the cutting of a canal across the Isthmus of Darien; a company for navigating the Thames and Isis by steam; a New Company, for coals only. Many of the companies which were thus set on foot were able, or conceived that they were able, to prosecute their objects effectually without deriving any sanction or special powers from the legislature. Others of them, and particularly such as were to have their sphere of operation at home, found it prudent or necessary to apply for private acts of parliament: so that in the month of March, there were upwards of thirty bills before the House of Commons, for the purpose of giving legal existence to different companies of this kind. In all these speculations, only a small instalment, seldom exceeding 5 per cent, was paid at first, so that a very moderate rise on the prices of the shares produced a large profit on the sum actually invested. If, for instance, shares of £100, on which £5 had been paid, rose to a premium of £40, this yielded on every share a profit equal to eight times the amount of the money which had been paid. This possibility of enormous profit by risking a small sum, was a bait too tempting to be resisted; all the gambling propensities of human nature were constantly solicited into action, and crowds of individuals of every description, the credulous and the suspicious, the crafty and the bold, the raw and the experienced, the intelligent and the ignorant, princes, nobles, politicians, placemen, patriots, lawyers, physicians, divines, philosophers, poets, intermingled with women of all ranks and degrees, spinsters, wives and widows, hastened to venture some portion of their property in schemes of which scarcely anything was known except the name." M. Juglar mentions a company formed to drain the Red Sea to recover the gold lost by the Egyptians when pursuing the Isrælites.

How like the Annual Register's account sounds to a description of modern stock exchange gambling, excitement in coppers or the reception of prospectuses of Mr. Pierpont Morgan's promotions a few years back or other ventures equally made the subject of gambling, just as then sound and risky ventures were promoted side by side and unwary investors found no little difficulty and unfortunately saw but too little inducement to distinguish between them. Speculations in goods came in aid of speculations in foreign loans, and in shares of joint stock companies. The general sense of prosperity is reflected in a passage in the Annual Register for the next year, 1825.

"Nearly all the property had risen greatly in pecuniary value, and every branch of internal industry was thriving. Agricultural distress had disappeared; the persons employed in the cotton and woollen manufacturers were in full employment; the various departments of the iron trade were flourishing; on all sides new buildings were in progress of erection; and money was so abundant that men of enterprise, though without capital, found no difficulty in commanding funds for any plausible undertaking. This substantial and solid prosperity was stimulated to an additional extent, and was, in appearance, still further magnified by the operation of the many joint stock companies which had sprung into sudden existence in the former (*i.e.* preceding) year. Some of these had put in motion a considerable quantity of industry, and increased the demand for various articles; and all of them, at their commencement, and for some time afterwards, tended to throw a certain sum of money into more active circulation, and to multiply the transfers of property from one hand to another. As these speculations still retained their popularity, the apparent prosperity arising from their artificial stimulus presented an imposing aspect. New companies were formed; day after day teemed with successive projects; and the shares of joint stock companies not only sustained the absurdly high prices which they reached in the latter end of 1824, but even rose far higher."

The extremest case in a list of quotations which follows in the Register is that of Real del Monte £400 shares with £70 paid. The premium on Dec. 10 stood at the enormous figure of £550. A month later, on Jan. 11 it was quoted £1,350 premium.

But inflated prices of commodities produced in time an effect of restricted demand. As spinners a few years back in Lancashire were refraining from purchasing more cotton at the high prices to which speculation had raised the staple, so then manufacturers and dealers worked up or ran off accumulated stocks and bought only from hand to mouth in anticipation of renewed supplies at more reasonable rates in a short time. Demand fell off in greater proportion than corresponded to the rise in price, as Tooke points out. New supplies were forthcoming from unaccustomed sources before any great lapse of time, and before summer was reached, most articles manifested a fall of price. "The principal overtrading "in goods, combining the extent of engagements with advance "of prices, had occurred in the article of cotton, which is the "most important of all others, as regards the magnitude of "of the capital embarked, and the interests involved in it." writes Tooke, "and on this article the reaction was first felt. "Considerable failures, connected with the cotton trade, "occurred in the United States, in the latter end of 1825. "These were felt chiefly in Liverpool, where the commercial "discredit preceded that of the metropolis. But the full effect "of the depressing causes was not experienced till the spring "of 1826; and it was not till then that failures and discredit "of mercantile establishments became extensive and important."

We have thus followed the events of 1824-5-6 to the crisis which supervened on unhealthy excitement and led the way to failure and depression. Let us look a little more closely into the mechanism of the rise in price and its sudden cessation which marks the critical point.

Credit played a great part—an overwhelmingly important part, in this as in all crises, and, though we may not consider it important to-day to inquire into the influence of the freedom of note-issues by bankers on the crisis, the banks played then a part corresponding to that which might conceivably still be played, though notes no longer affect the ability of the average English banker to meet the demands of his clients. Bankers as dealers in and managers of credit have played a great part even in crises arising out of speculations in commerce, where no banking mismanagement has been in question. They cannot but be closely connected with and intimately affected by revolutions in the tone of the business community in reference to credit. Hence, to connect the name of banks with crises and to treat of them largely from the point of view of the movements in bank accounts connected with them is not to pretend that such events are peculiarly caused by the banks. Bank accounts may serve as a means of registering and measuring movements which originate outside banking circles and the worst effects of which are felt by others than those engaged in this important department of modern business.

The course of events appears to have been somewhat of this nature. Subscribers to ventures which caught the public fancy reaped considerable profits by selling their shares to others. With the profits thus secured they were able to become subscribers to new ventures, which in turn yielded fresh profits, a fund for new subscriptions again. Payment for transfers of shares were often made by means of either bills or advances obtained on the security of what looked to be a valuable property. The higher the quoted price went the larger the credit available for entering on new ventures and the greater the stimulus to prices from large competition between purchasers. In the case of dealings in produce a similar course of events was followed. Advances obtained on the security of documents held against produce provided the means of taking up other produce, which in turn became security for a new advance and so on. All went merrily as a marriage-bell so long as prices continued to rise, but, in due course, instalments on the loans or shares had to be paid, purchasers of shares or of produce became more difficult to find. Those who had bought with the sole desire to pass on their purchase in a brief period and pocket a profit began to be in difficulties. Here and there a weak holder is forced to realise by a difficulty in getting further advances. The necessity for keeping advances duly related to resources at last leads those making them to begin to put up the price at which advances can be secured. The rise in the discount rate is at once a reason why weak men should force on realisations of what they hold. Prices tremble at their topmost figure. They begin to fall. Losses crush those whose resources are narrow. Distrust is awakened by the sense of losses accumulating or anticipated. The edifice of credit begins to tremble on its foundations, the insufficiency of which is brought home to many by unpleasant reminders. The crisis has come.

The movement of exchanges, hitherto very rapid, very advantageous, now suddenly arrested by the stoppage of the upward movement in prices, recourse is had to banks to obtain credits so as to avoid a forced sale of what no longer finds a ready buyer. But, during the rise, the banker's portfolio has become filled. For external payments at any rate, whatever may be possible in regard to internal exchanges, help becomes impossible from this source. The purchaser of raw material must pay for it. His finished products no longer sell at advancing prices, at the prices he has put on them even. To liquidate foreign engagements, recourse must be had to remittances of gold, which stands alone among commodities in respect of stability of value at such a moment and readiness and cheapness of transport. The metallic reserves of the banks must be drawn upon to effect payments for which notes or open credits no longer suffice. Generally speaking, these very reserves have already undergone some diminution during the preceding activity of business, and, to protect what remains, the discount rate is raised by sudden leaps to an abnormally high level. This high rate of discount is often charged with all the evils associated with a crisis, when it is but the index of the pressure existing at the moment.

The weakest, as I have said, are compelled to realise holdings, even at severe loss, to meet pressing engagements. The fall of price thus initiated proceeds with a rapidity only comparable with that of the last stages of the inflation. Imprudent and prudent are alike involved in the consequences of such a fall. Mutual confidence, the basis of credit, vanishes, a rush ensues, every man for himself, and the devil take the hindmost —sauve-qui-peut! ! ! Cash is the sole means of meeting engagements, no trust exists in deferred payment. This acute stage decides the fate of a great number of speculators, who are unable to hold out for more than a week or two at the most. This stage of acute crisis or panic is not of long duration. All engagements which were based on insufficiently substantial foundations must be liquidated. The losses suffered, on paper, are perhaps more striking than the gains previously made, also on paper, were startling. In a short time a heavy calm settles down on the business world. The painful process of slow excision of the diseased members of the commercial body has to be gone through and commonly is somewhat prolonged. The fall in prices and the slackness of business combine to render the process distressing. The fall of one house pulls down others and these in turn, in their collapse, shake the foundations of even the most honoured and substantial firms in many cases. Many who have not erred from the straitest path of commercial and financial rectitude are compelled nevertheless to suffer in a general breakdown.

The abuse of credit, its imprudent excess, is followed by a stagnation which drags on through some years. Men's readiness to trust to others to fulfill engagements has received a shock. The panic period is marked by a great scarcity of mobile capital: it is not that it has been suddenly destroyed, but that work usually done by credit is thrust upon the other instrument. After the panic, in Mr. Mills' first stage, the Post Panic Period, the opposite effect of superabundance of capital is found. The removal of the first influence of the shock experienced in the panic moment affects both supply and demand for capital. The necessity for mounting guard over bank reserves with a high rate of discount as weapon of defence against all assaults is soon removed, and such reserves are again at the service of commerce at ordinary rates. But though at the service of commerce at ordinary rates, it is not for every purpose so available. A selection takes place among applicants, unsuitable ones being simply refused instead of being accommodated at somewhat advanced rates. Thus what there is may go further among those who are permitted to share in it. In reference to demand, further, the fall of prices makes many enterprises look unprofitable which might have been tempting under advancing prices or even with a reliance on steady conditions. Want of confidence in the future, however, holds men back and thus removes their demand for capital for such enterprises. Further, the seller on credit, as observed, became a buyer with funds raised on the faith of his sales. The forced realisation which the crisis has entailed on some disinclines them from repeating their unprofitable experience too soon and on too large a scale. They have burnt their fingers, and a burnt child dreads the fire. Thus the demand for capital falls off also, concurrently with an effective increase in supplies. Saving, too, proceeds, among large classes, spite of losses, in some sense because of losses which must be replaced. Thus capital steadily accumulates while the indisposition to enterprise exists. The result is a low rate of interest, gilt-edged securities gradually rise in price, while those which have but a moderate degree of risk associated with them maintain a moderate level of price. There is, too, a falling off in employment associated with the check of enterprise. A selection among workmen becomes possible when the feverish anxiety to fill orders within a narrow limit of time is removed. The more inefficient are dispensed with and find an extremely difficult task to secure any, even unskilled, work which they must compete for with a host of others similarly squeezed out of hosts of establishments. Production is maintained "from hand to mouth" only. Foreign trade also undergoes a check and while investments abroad are restricted, foreign funds are attracted by a low level of prices, if it be relatively as well as absolutely low. For a period of two or three years, this dull state of affairs commonly continues. The weeding out process is completed in due time, and the general tone of business becomes the healthier for the removal of the weak elements in it. Painful is the process, there is no doubt that an important service has been rendered over and again by the violent ejection of diseased or disease-breeding particles. Some have held that only through such violence of outbreak could sanity be restored and that periodic crises were a necessary safety-valve for the mercantile machine. As in some diseases of the human frame, violent measures may be the surest cure. But others have held that such violence in cure was not essential, that milder means or preventative measures were feasible. It is really an important question. The sufferings of panic may be possibly be less than those of a suppressed state of disorder, and it may be that the symptoms of the disorder would be entirely ignored did they not take the extreme and exaggerated form manifested in recurring crises. Better an occasional severe fit than a continual wasting disorder. That is a feeling indulged in in some quarters, and surely not less reasonable than the other. If one could be sure of warding off the disease when its manifestations were slight; if our physicians possess sufficient skill in diagnosis, and are sufficiently trusted and free to apply the cure before the disease reaches the violent stage, less painful cures may be possible than panics. I am somewhat doubtful if the hope of entire prevention of the evils underlying crises can be looked for, whether the business world would not need to be more nearly in a millennial condition than it is to justify reliance on freedom from such disorder.

Following the stage of depression when recovery from the panic-fright gradually occurs we have a period of revival of enterprise. The accumulation of capital is itself a source of pressure on leaders of enterprise. Credit gradually recovers from the strain from which it has suffered, enterprise increases, profits increase. New businesses are established, new openings for trade are exploited, and, with new men in control of capital comes the tendency to consign the memory of the preceding troubles to oblivion. A habit of reliance in the fulfilment of engagements once more spreads over the fields of commerce, and the real health of trade paves the way for the renewal of a period of over-confidence, of too ready use of credit, of the excesses of speculation leading to crisis with which I began the survey of the cycle.

The business cycle then passes through these stages: Great prosperity, great activity of business, rise of prices, sudden cessation in the rise, interruption of business, fall of prices, the liquidation of the houses which have been overwhelmed in the smash or were involved in an excess of committments, and then a renewal of prosperity with the recommencement of the round. Those are the general features, modified by particular events in each special case or in each separate country, interrupted by the effects of war or of famine, the steps in the progression being capable of being hastened a little or retarded somewhat by special circumstances.

When to mercantile distrust is added fears relating to stability of the currency, the evils of panic may be exaggerated. Thus can an ill-regulated system of note-issues add to the acuteness of a crisis, so also may it help to develop it by providing one more medium by which the unwise extensions of credit which are the fundamental cause of the disturbance can be effected. That such currency causes can be made to bear the whole weight of blame for the out-break or generation of crisis conditions is, however, difficult to hold. When credit can be extended through many channels, the restriction of one, unless it be the most important, cannot suffice to restrain the flood.

But may we not take even a more general view of the relation of affairs by which the particular phase of overwhelming excitement in the higher ranks of the financial and business world may be shown in relation to the general economic situation of society?

The prelude to crisis was seen to be a continued and ever increasing willingness to devote capital to distant and uncertain ventures or to foreign loans which often mean the destruction of the proceeds of the loan in exchange for a lien on some part of the future wealth of the borrowing nation. Now the effective use of the stored up wealth of the community, like the maintenances of its living members, demands a supply of circulating capital in proper forms adapted to the several uses to be subserved. To produce such supplies requires the devotion of a due proportion of current labour and existing capital to such production. The continued undertaking of distant enterprises absorbing an ever increasing amount of the available national energy may very well divert from its necessary application a part of the funds and efforts so required for current maintenance, or for that of the near future. Obligations based on the supply of goods required for current maintenance of men and capital can be met, because the goods go into immediate consumption, so long as the supply of capital in circulating forms is maintained. Quickly maturing obligations are associated on the productive side with quickly consumed commodities. The defect at times of crisis was seen to be that quickly maturing obligations are scarce, while there is a superabundance of slowly maturing obligations. The banker is, perhaps, the person on whom falls the task of indicating a state of disorder, because his attention is in a special degree directed to maintaining in his business a due proportion between the obligations which mature quickly and the resources at his disposal for ventures of all kinds.

We may then, perhaps, say that a crisis is a manifestation of two things. On the one hand a too ready granting of credit, without sufficient foundation, without realisable security in fact; and on the other that, under a distorted view of events, too large a fraction of the available energies of the community have for the time been devoted to distant and precautions enterprises. These two things are thus intimately connected with each other.

LECTURES ON THE BANK ACT.

LECTURE VIII.*

16th March, 1906.

A. RIVES HALL.

Advances to Owners:

Under the provisions of the Act in force before 1891 (R. S. C. c. 120) receipts given by certain manufacturers, dealers, etc., for goods their own property were recognized as warehouse receipts, and as such were good security for advances to the owners. But the present Act has distinguished the two forms of advance, and by restrictng the definition of a warehouse receipt to documents that issue from one who is not the owner of the goods warehoused, have excluded manufacturers and dealers from the benefits of section 73, that is of obtaining advances directly on their own goods. Of course such merchants may avail themselves of the provisions of that section, by formally warehousing their goods, but they can no longer obtain advances directly on their own receipts.

Under the following section (s. 74) certain special classes of persons may obtain advances on certain classes of goods, by following with scrupulous care and exactitude a form set forth in the Act. The owners who are specially indicated by the Act are divided into three classes. (1) Lumbermen—(2) Wholesale Manufacturers—(3) Wholesale Dealers.

1. Section 16 of the Amending Act of 1900 reads as follows:—

> " Loans on standing timber, etc. The bank may lend " money upon the security of standing timber and the " rights or licenses held by persons to cut or remove such " timber."

This is an addition to the general powers of a bank, as found in Section 64. The authorization of loans upon the security of standing timber may be said to be a derogation from the prohibition to lend upon the security of land or immoveable property, contained in the latter part of that section. The security of standing timber or of timber licenses is not put upon the same footing as mortgages upon real or personal property. A bank is only authorized to take the latter as additional security for debts contracted to it in the course of its business. Nor is it authorized to deal with such timber or licenses as it may do with negotiable securities.

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*These lectures were delivered prior to the revision of the Canadian Statutes which has resulted in many changes in the numbering of sections of the Bank Act referred to by Mr. Rives Hall.—Editor.

It may deal in, discount, lend money and make advances on negotiable securities or take them as collateral, but upon timber and licenses it can only lend money. (Maclaren p. 160.)

It is probable that as with advances on warehouse receipts, securities under this head must be for an actual advance, and the bank may not take timber or licenses with a renewal, or as collateral to secure a pre-existing debt. Section 75, it is true does not expressly apply to these newly authorized loans; but as the bank is authorized only to "lend money" on these securities they should be taken when the loan is made, or the debt contracted, or there should be a written promise or agreement that they will be given to the bank.

2. *Loans to Manufacturers*:—Section 74.—"The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods wares and merchandise manufactured by him or procured for such manufacture."

In the interpretation clauses a manufacturer is defined as including 'Maltsters, distillers, brewers, refiners, and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process, or mechanical means, any goods, wares and merchandise." A wholesale merchant is one who deals only with persons who buy to sell again, so a wholesale manufacturer may be considered as one who, as a rule, disposes of his manufactured products to merchants and not to comsumers.

The section does not say that the goods manufactured by him must be owned by him, the words in paragraph 3 are "such security may be given by the owner" but upon the whole construction of the provision such would appear to have been the intention, and it would not be advisable for banks to lend money to one person upon the security of goods belonging to another. For this reason it is important that the bank should know its customer, and that he is, in fact, the owner of the goods that he offers as security.

The goods upon the security of which the advance may be made are either those "manufactured" by the borrower, or those "procured for his manufacture" that is his raw material.

This clause is thus less extensive than the one following, it gives less latitude to manufacturers than is enjoyed by dealers, who may obtain advances on all or any part of their stock. Its effect is to restrict the borrowing of manufacturers to the goods actually manufactured by them, or procured for manufacture. It would not, however, necessarily follow that because a customer sold some of his goods that they had not been originally purchased for purposes of manufacturing.

There appears to be nothing to prevent a firm from purchasing material with the intention of manufacturing the same and then if a favourable offer be made, selling such material; and if, while it remained in the firm's factory or yard, an advance had been made on the security of such material, the bank could undoubtedly exercise its privilege. But if it clearly appears that the material was not used or intended to be used for the purposes of manufacture, but was unquestionably simply purchased to be resold, it is doubtful whether a bank would be entitled to a privilege thereon even though covered by documents under this section.

There is still another point of difference between loans to manufacturers and those to dealers. It will be noticed shortly when we reach the second paragraph of this section that the bank may allow the goods of dealers subject to security to be removed, and other goods substituted therefor. There is no such provision for the goods of manufacturers. The reason is obvious. The dealers' goods are coming and going all the time, but the manufacturers' materials go through a more or less prolonged process in their factory, and there is not the same occasion for substitution. The effect of this important omission from the paragraph we are now considering is that if a substitution be made subsequently to the date of a security being given to the bank, that is if goods covered by the security be removed and replaced by other goods and no new security be taken therefor, the bank would not have any privilege over the latter. It is important therefore that if a bank consents to the removal of goods subject to its advance, it should, as subsequent deliveries of goods are received in the premises of the customer, request additional or new securities in the form Schedule C.

Having made an advance to a manufacturer, whether on a warehouse receipt or on the security we are now discussing, the bank follows the goods through the whole process of manufacture and retains its title and privilege over the finished product as well as over the new material.

Section 76.

> "If goods, wares and merchandise are manufactured or produced from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or security given under section seventy-four of this Act, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title and for the same purposes, and upon the same conditions as it held or could have held the original goods, wares and merchandise."

In the former Act (R. S. C. c. 120) the principle of this Section applied only to cereal grains manufactured into flour or malt, or hogs manufactured into pork, bacon or hams.

It is now applicable to all manufactured articles. Where other goods than those covered by the warehouse receipt or security enter into the composition of the manufactured goods nice questions may arise. If these other goods belong to the manufacturer there probably would be no difficulty, as that might be considered to be in the contemplation of the parties, and the blame, if any, would be on the manufacturer.

If, however, he should combine material covered by two or more assignments to different banks under Section 74, the difficulty would be greater. In that case the question would be settled by the common law of the Province, as the Act is silent on the point. In this Province the Civil Code lays down a series of rules (429-442) too long to be enumerated here, the principle being that the product might be divided according to the respective interests of the parties, or if not divisible, the party having the greatest interest might claim the whole on paying the others what they are entitled to. Where a miller gave a bank a warehouse receipt, under the old Act, for a certain quantity of "wheat and, its product," it was held that once the wheat in the mill was reduced to a quantity equal to or less than the amount in the receipt, the whole of it belonged to the bank, and so long as the "product" could be traced whether in flour or money, it was recoverable by the bank as against the miller (Re Goodfellow, 19, O. R. 299) Maclaren, p. 173.

The form in which the bank must take its security for loans to manufactures, and the attending circumstances, being the same as in loans to dealers we shall delay our discussion of the celebrated Schedule C. until we have considered paragraph two that authorises the latter class of advances.

3. *Loans to Wholesale Dealers.* Par. 2. "The bank may also lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes, and rivers, or to any wholesale purchaser or shipper of or dealer in live stock or dead stock and the products thereof. The bank may allow the goods, wares and merchandise covered by such security to be removed and other goods wares and merchandise mentioned in this subsection to be substituted thereof, and those so substituted shall be covered by such security as if originally covered thereby: Provided always, that such goods, wares and merchandise are of substantially the same character and of substantially the same value as, or of less value than, those for which they have been so substituted.

The securities given under this section are uncommonly like chattel mortgages, a form of security unknown to the Province of Quebec although eager creditors have often endeavoured to avoid the prohibition to hypothecate moveables. But such a mortgage is well known in the other Provinces where it is defined as a transfer of the title to personal property, as security for the payment of money or the performance of some other act, and subject to the condition that if the transferer performs the specific act or repays the money the title shall revert to him.

There is a difference between a chattel mortgage and a pledge. In the case of a mortgage the property in the goods affected passes to the mortgagee subject to be divested. The same distinction exists between a hypothec in this Province, and an assignment under section 74, the title in the latter case passing to the bank.

The first words that strike us in reading this clause are "wholesale purchaser or shipper of, or dealer in." Who is a wholesale purchaser? Mr. Lash, in a well-known article on this section (II Bankers Journal p. 67) says on this point:—

> "I frankly confess my inability to give any satisfactory definition of a wholesale purchaser or shipper. In the majority of cases the distinction between wholesale and retail is easily seen, but the nearer the dividing line is reached, the more difficult the question becomes. The matter was debated before the Government when the Bill was under their consideration, and was further debated in Parliament when the Bill was before that body, but no one attempted to define the meaning of the term. It was thought best to let it remain indefinite, leaving the banks to avoid transactions in which the question might be raised, or to take the risk which might be entailed."

It is true, as has already been pointed out, that in at least one case, the jurisprudence has defined a wholesale merchant as one who deals with persons who buy to sell again (Treacher vs. Treacher W. N. 1874 p. 4) but circumstances might arise in which that definition would be found to be inadequate. This is specially so nowadays, when many large consumers buy directly from the manufacturers, or dealers. The objection would not perhaps apply to dealers in agricultural products, but it would seem to apply with peculiar force to dealers in the products of the forest, the quarry and the mine. For instance, a lumber dealer may transact most, if not all of his business with manufacturing corporations, that buy as consumers with no intention of selling again; but that fact would not I apprehend deprive such a dealer of the peculiar characteristics of a wholesale merchant.

Wholesale dealers enjoy a very important privilege that is not accorded to manufacturers, or to customers obtaining advances on the security of warehouse receipts, that of substituting other goods for those held by the bank. This is a privilege quite distinct from that referred to in the second part of Section 75, which authorizes the bank to exchange a warehouse receipt or a security in the form C. for a bill of lading, or vice-versa. The clause granting this special power was added by the Amending Act of 1901 to make the law correspond to a recent decision in Manitoba. As the law formerly stood one warehouse receipt or security under this section could not be substituted for another, and it was held that the bank could not be affected with notice of the purpose for which the money was borrowed, provided the borrower and the goods came within the description of the section. (Bk. Hamilton vs. Boyce 90).

In that case the bank advanced money on new receipts—the case was under the old law when the owner might give a warehouse receipt,—to take up notes secured by old receipts. The Court held that there was a negotiation of the new notes, in the meaning of the Act because an antecedent lien was at the same time surrendered. In subsequent actions, in which the facts were analogous if not similar, the judges have been careful to distinguish the questions at stake, and have refused to reognize as a negotiation any tansaction by which any preexisting debt has been extinguished whether or not it had been secured by a security which was at the same time surrendered.

In the Bank of Hamilton vs. Shepherd (21 O. A. R. 156) the Court of Appeals in Ontario decided that " the fact that, for the debt when originally contracted, the bank held security which they gave up when the renewals were taken, cannot assist them. The bill or note may be renewed without affecting the security, but it is not contemplated that the latter shall be given up and a fresh security taken on the renewal."

The Form of the Security:

Advances to wholesale manufacturers, and wholesale dealers although very different in other respects must both follow the form given in paragraph 3 of Section 74:

> "Such security may be given by the owner and may be taken in the form set forth in Schedule C. of this Act or *to the like effect;* and by virtue of such security, the banks shall acquire the same rights and powers in respect to the goods, wares and merchandise, stock or products covered thereby, as if it had acquired the same by virtue of a warehouse receipt."

The form of the security given in Schedule C as amended in 1900 is as follows:—

In consideration of an advance of .... dollars made by the .... Bank to A. B., for which the said Bank holds the following bills or notes: (describe the bills or notes, if any), or in consideration of the discounting of the following bills or notes by the ...... Bank for A. B. (describe the bills or notes) the goods, wares and merchandise mentioned below are hereby assigned to the said Bank as security for the payment on or before the .... day of ...... of the said advance, together with interest thereon at the date of ......per cent, per annum or renewals thereof, or substitutions therefor, and interest thereon, or as the case may be).

This security is given under the provisions of section seventy-four of the Bank Act, and is subject to the provisions of the said Act.

The said goods, wares and merchandise are now owned by ......are now in possession of .... and are free from any mortgage, lien or charge thereon, (or as the case may be), and are in (place or places where the goods are), and are the following (description of goods assigned).

Dated, etc.

(N.B.—The bills or notes and the goods, etc., may be set out in schedule annexed).

This form should be departed from as little as possible, as opinions might differ as to whether the form substituted really was "to the like effect," as required by this sub-section. It is not necessary that the goods should be in the possession of the owner. If they are not it may be so stated in the above form, or in that event a warehouse receipt might be taken from the bailee and the security be given in this manner.

The goods should be described with as much precision as the nature of the case will admit of, and if possible by distinguishing marks, and the same principle applies to the premises where the goods are, so that there may be no difficulty in identifying them. (Maclaren p. 165.)

It would seem that if the form be carefully followed other conditions might be added without defeating the validity of the security. For instance the bank might incorporate in the form a covenant on the part of the customer to keep the goods, represented by the document, insured. And as section 78 indicates that, with the written consent of the owner, the bank when forced to realize may dispense with the formal notices of sale, such a consent might be added to the form of the security itself. Such clauses would not alter the 'effect' of the document, which is simply that certain goods on the premises of the borrower are assigned by him to the bank as security for an advance.

In Banque d'Hochelaga vs. Merchants Bank (10 Man. 361) both banks claimed certain bacon under securities given under this section. The Merchants Bank had received several such documents for advances, the goods being pointed out to them in the warehouse and labelled with the name of the bank. The owner, however, kept selling and replacing the bacon, but without the knowledge of the bank. Finally the debts were consolidated, the new notes and a new security under this section given. The selling and replacement continued, and subsequently the customer gave a similar security to the Banque d'Hochelaga, setting apart and marking as theirs, some of the bacon previously set apart for the Merchants Bank with some of that substituted. On the customer absconding the Merchants Bank took possession and the Banque d'Hochelaga brought action claiming the property.

It was held that the instruments in the form of Schedule C. were sufficient to pass the property at common law; that after the assignment to the defendants—the Merchants Bank—

the title was in the defendants and not in the customer; the defendants were entitled, as against the customer, to the substituted bacon; that consequently his assignment to the Plaintiffs was null and void. It was also held that the consolidation of the debts and securities did not operate as a discharge, and the opinion was expressed that section 75 might be construed as not clearly prohibiting the taking of a security under this section for previous advances, and that the assignment might be good as a mortgage taken as collateral.

When the Security May Be Acquired:

Section 75, which we considered last week, applies also to advances to wholesale manufacturers and dealers, accordingly these securities can be taken as collateral security only if the bill or note is negotiated at the time the bank acquires the security, or if the debt or liability is contracted at the time of such acquisition, or if at the time the bill or note is negotiated or the debt or liability contracted, there is a written promise or agreement that such security shall be given.

Bank of Hamilton vs *Holstead*. (28 S. C. R. 235). Girouard, J. "The appellants from time to time advanced large sums of money to one Zoellner, furniture manufacturer at Mount Forest, upon what they understood to be security upon all his furniture on hand, and the materials procured for manufacture, and also upon the paper of his customers. It is admitted that no money was advanced by the bank at the time the security was taken except at the time the first transaction took place, when the first assignment was made for $5,000.... but that security was abandoned by several renewals and more particularly three in 1895 which are alone claimed to be in force. Zoellner has become insolvent and his assignee claims the articles assigned as part of the assets of the estate. The appellant contends that their security is valid under the 74th Section of the Bank Act. We are of the opinion that the Bank Act, Section 74 and 75 contemplates only cash advances made at the time the assignments are acquired, and that a renewal of notes or bills is not a negotiation within the meaning of Section 75. The bills or notes may be renewed, but not the security. The Act does not authorize the substitution of one assignment for another. Any assignment made under Section 74 for advances already made or to be made is illegal and confers no lien or security."

Where a warehouse receipt was endorsed to the acceptor of an accommodation bill by way of security for his acceptance, it was held that there was no debt contracted at the time so as to give the acceptor a valid claim to the property mentioned in the receipt. (Cockburn *vs.* Sylvester 1 O. A. R. 471.)

In Perkins vs. Ross (6 Q. L. R. 65) where a debtor pledged warehouse receipts as collateral security for drafts and agreed that if the proceeds of the goods were more than sufficient to pay their drafts, the surplus should go to pay an old indebtedness, the agreement was held void as to the latter.

With regard to the promise or agreement that must be given with the bill or note in order to validate a security subsequently assigned, we may again point out what was said of warehouse receipts in the same connection. In drawing up such an agreement care should be taken that it is made wide enough. The promise may include more than the security, but the security cannot cover more than the promise. The property need not be in the possession of the customer, or even in existence, when the customer obtains the advance; but it must be in contemplation that he is to acquire it. The promise may also be to give these securities from time to time.

Mr. Lash has epitomized the effect of the Sections that we have been considering in the following rules for advances to manufacturers:

> 1. The borrower must be a wholesale manufacturer (wholesale dealer, etc.)
>
> In deciding a question who comes under this definition, give the benefit of the doubt to the bank and refuse the advance.
>
> 2. Follow closely form C in the schedule of the Act.
>
> 3. Remember that the description of the goods must be a particular description, and that the place where they are must be mentioned.
>
> 4. The money must be advanced at the time security is taken, or upon a written promise that it will be given.

5. No change in the form of a pre-existing indebtedness such as discounting a note and using the proceeds to pay off such indebtedness will be regarded as an advance for which security in form C could be taken.

6. A security in Form C can be taken in substitution for one previously given.

To enhance the force of these securities, warehouse receipts, bills of lading, and assignments under Section 74, and to deter dishonest men from endeavouring to overreach the banks, the Act provides serious penalties for false statements in the documents or fraudulent alienation of the goods covered thereby. The offence is made a misdemeanor and renders the offender liable to imprisonment for a term not exceeding two years.

At the conclusion of our last lecture I said that we should postpone until this evening the discussion of some further sections that apply to both warehouse receipts and assignments. These are Sections 77, which gives a preference over unpaid vendor, and 78, which provides for the sale of pledged goods.

Section 77: *Preference Over Unpaid Vendor.*

"All advances made on the security of any bill of lading or warehouse receipt, or security given under section seventy-four of this Act, shall give to the bank making such advances a claim for the repayment of such advances on goods, wares and merchandise therein mentioned, or into which they may have been converted prior to and by preference over the claim of any unpaid vendor; but such preference shall not be given over the claim of any unpaid vendor who had a lien upon the goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading or security, unless the same was acquired without knowledge on the part of the bank of such lien."

The effect of this section is to over-ride the civil law of this province with regard to the privilege of the unpaid vendor, who under ordinary circumstances comes before all claims but those for law costs and tithes.

C.C. *1993.* Privileges may be upon the whole of the moveable property, or upon certain moveable property only.

C.C. *1994.* The claims which carry a privilege upon moveable property are the following, where several of them come together they take precedence in the following order, and according to the rules hereinafter declared, unless some special law derogates therefrom:

1. Law costs and all expenses incurred in the interest of the mass of the creditors.
2. Tithes.
3. The claims of the vendor.

C.C. *1998.* The unpaid vendor of a thing has two privileged rights:

1. A right to revendicate.
2. A right of preference upon its price.

In the case of insolvent traders these rights must be exercised within thirty days after the delivery.

C.C. *1999.* The right to revendicate is subject to four conditions.

1. The sale must not have been made on credit.
2. The thing must still be entire and in the same condition.
3. The thing must have passed into the hands of a third party who has paid for it.
4. It must be exercised within eight days after the delivery; saving the provision concerning insolvent traders contained in the last preceding article.

C.C. *2000.* If the thing be sold pending the proceedings in revendication, or if, when the thing is seized at the suit of a third party, the vendor be within the delay and the thing within the conditions prescribed for revendication, the vendor has a privilege upon the proceeds in preference to all other privileged creditors hereinafter mentioned.

If the thing be still in the same condition, but the vendor be no longer within the delay, or have given credit, he has a like privilege upon the proceeds, except as regards the lessor or the pledgee.

If the bank has notice of the unpaid vendor's claim it may not avail itself of the privilege given in Section 77, but if it has taken the security in good faith without such notice, it will be entitled to hold the goods even against the unpaid vendor. The power of the Federal Parliament to make such a rule even against the law of the Province was upheld in the case already referred to, of Tennant vs. The Union Bank.

This section thus makes the bank's position so strong that it is practically unassailable.

The bare right, however, of holding the security and ranking before other creditors would not be completely satisfactory were the bank obliged to follow the ordinary procedure in realising on securities thus assigned to it. The law of this Province does not endow the pledgee with any greater freedom in disposing of the goods pledged, than is enjoyed by the ordinary creditor. Before he can sell such goods, he must take judgment, after a costly and dilatory proceeding, and after judgment seize the goods under a formal writ of execution and proceed to sale with the regular formalities. In this procedure costs would mount up, and might very seriously reduce the bank's ultimate security.

In England on the other hand there is a well settled rule of common law that a pledgee upon default may sell at public auction goods or chattels that are pledged, without judicial process, upon giving the debtor reasonable notice to redeem.

The Bank Act has, with regard to securities taken in pledge by the Bank, made the English rule applicable to the whole Dominion, thus rounding out the completeness of the security afforded the bank, by the transfer of warehouse receipts and assignments under Section 74.

This provision is found in Section 78.

78. Sale of Pledged Goods: In the event of non-payment at maturity of any debt or liability secured by a warehouse receipt or bill of lading, or security given under section seventy-four of this Act, the bank may sell the goods, wares and merchandise mentioned therein, or so much thereof as will suffice to pay such debt with interest and expenses, returning the overplus, if any, to the person from whom such warehouse receipt, or bill of lading, or security, or the goods, wares and merchandise mentioned therein as the case may be were acquired; but such power of sale shall be subject to the following provisions, namely:

> 2. *Notice of Sale*: No sale without the consent in writing of the owner of any timber, boards, deals, staves,

> sawlogs or other lumber, should be made under this Act until notice of the time and place of such sale has been given by registered letter mailed in the post-office to the last known address of the pledgor thereof; and no goods, wares and merchandise, other than timber, etc., shall be sold by the Bank under this Act without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post-office to the last known address of the pledgor thereof, at least ten days prior to the sale thereof."

The consent of the owner might be included in the security in the form C. as a separate covenant either dispensing entirely with notice, or providing for a shorter or simpler form of notification. Without such consent the Bank is powerless to vary the terms of the section which are negative and prohibitory. If a sale were made without the required notice it would appear to be null, at least in this Province, and the Bank would be liable in damages for its illegal Act as well as subject to the penalty of five hundred dollars provided for the violation of any provision contained in sections 64 to 78 inclusive. Armed with the consent of the owner, the Bank may dispose of the goods in any agreed on way, but without such consent the sale must be by auction.

3. *Sale to be by Auction*: Every such sale of any article mentioned in this section, without the consent of the owner, shall be made by public auction, after a notice thereof, in at least two newspapers published in or nearest to the place where the sale is to be made, and if such sale is in the Province of Quebec, then, at least, one of such newspapers shall be a newspaper published in the English language, and one other such newspaper shall be a newspaper published in the French language."

LECTURE IX.

Mortgages as Collateral Security.

We must return again for a few moments to the consideration of Section 64, the last clause of which reads as follows:—

> " And the Bank shall not, either directly or indirectly " lend money or make advances upon the security, mortage " or hypothecation of any land, tenements, or immoveable " property."

The policy of the law in preventing banks from taking a title to real estate or making a loan directly thereon is threefold.

> 1. To keep the capital of the banks flowing in daily channels of commerce.
> 2. To deter them from embarking in hazardous real estate speculations.
> 3. To prevent the accumulation of large masses of property in their hands to be held as it were in mortmain.

While banks are thus prohibited to lend money on real estate they may take mortgages as collateral security to secure a pre-existing debt. This permission provides a way of escape when the bank finds itself too heavily involved with a customer, and in no way tends to encourage or enable the bank to infringe the principles of sound banking, to which we have just referred.

The effect of the provision in Section 64 is moderated by Section 68, which reads as follows:—

> Section 68. " The bank may take hold and dispose " of mortgages and hypotheques upon real or personal " immoveable or moveable property, by way of additional " security for debts contracted to the bank in the course " of its business; and the rights, powers and privilges " which the bank is by this Act declared to have or to have " had in respect of real or immoveable property mortgaged " to it, shall be held and possessed by it in respect of any " personal or moveable property which is mortgaged or " hypothecated to it.

This Section is substantially the same as that in the Bank Act of 1850 of the old Province of Canada, which has been continued in the succeeding Acts. By section 64 a bank is prohibited, except as authorized by the Act from lending money or making advances upon the security, mortgage or hypothecation, of any land, any ships or other vessels, or upon the security of any goods, wares and merchandise. The present Section contains some of the exceptions. A Bank may not lend money upon such security; but it may take mortgages upon such property by way of additional security for debts contracted to the bank in the course of its business. (Maclaren p. 138.)

It will be observed that the expression used is "debts contracted" and not ' debts previously contracted," as in the National Banking Act of the United States. Our jurisprudence has not been uniform as to whether our Act should be construed in the same sense as that of the United States. All are agreed that a mortgage cannot be taken to secure future advances. Opinions differ as to whether it can be taken to secure a debt contracted simultaneously with the taking of the mortgage as additional security. The weight of authority would appear to be that possibly it may be taken at the same time, provided it be clear that the money is not really advanced on the security of the mortgage. In a simultaneous transaction the presumption would be against its validity, and if a very short time intervened this might be taken as a suspicious circumstance. (Maclaren, p. 139.)

It would not be advisable, however, to trust implicitly in any circumstances that seem clearly to establish that the money is not advanced on the security of the mortgage, and the safer course is to refuse to enter into any transaction that seems to be in the least ambiguous.

The leading case on this point is the Bank of Toronto vs. Perkins, in which one, Bonnell, transferred to the Bank of Toronto by Notarial Deed an hypothec on certain Real Estate in Montreal made by one, Campbell, to him as collateral security for the note which was discounted by the Bank and the proceeds placed at Bonnell's credit on the same day on which the transfer was made. The action was brought by the Bank against the Insolvent Estate of Campbell to set aside a prior hypothec given by Campbell and to establish their priority.

It was held that the transfer by Bonnell to the Bank of Toronto was not given to secure a past debt but to cover the contemporaneous loan and was, therefore, null and void as being in contravention of the Bank Act.

In commenting on the case the late Sir Henry Strong remarked:—

> "The evidence of Joseph R. Hutchins, a witness for "the defendants, shows beyond question, in the entire "absence of any contradictory proof, that the several "notarial deeds of the 19th January 1876, whereby S. S. "Campbell transferred certain hypothecary claims or "vendor's privileges to Bonnell, and Bonnell transferred "the same claims to the Bank as security for the payment "of the promissory note of the 30th December, 1875, were "both made in pursuance of an arrangement with the "bank, whereby the bank agreed to discount the note on "the faith of the security afforded by the transfer, that the "deeds were parts of one and the same transaction, and "that Bonnell was a party interposed to give the loan by "the Bank a color of legality. Further, the evidence "shows that the loan was, in fact, made directly to "Campbell, and was not made until after the deeds of "transfer were completed."

Similar transactions have been discussed in England and the Privy Council has already been called upon to pass upon the validity of an equitable mortgage of lands by desposit of title deeds originally given to secure advances made by a Bank which was prohibited from lending money on such security by a provision in its Statute of Incorporation expressed in these words:—

> "Provided always, that, save and except as herein-"before specially authorized, it shall not be lawful for the "said corporation to advance or lend money on the security "of lands or houses."

It was argued that this prohibition was not founded on any considerations of public policy, but was simply a regulation for the internal management of the Bank, and therefore a security taken in infringement of the proviso was not void in the hands of the bank and might be enforced as effectually as if it had been given to secure a past debt. The Privy Council, however, refused to adopt that argument;

> "They cannot but see in this clause that there was "some object on the part of the Legislature to regulate, "indeed, the internal management of the affairs of the "bank, but to regulate those affairs not merely, if at all, "with reference to the interests of the shareholders, for it "is difficult to see how the interests of the shareholders "could be prejudiced by taking securities of this kind, but "rather to regulate those affairs with some regard to the "interests of the public, who, for some reason or other, "which it is not for their Lordships to speculate upon, "are, by this Act, supposed to have an interest in confining "the bank to making advances of money without these "solid items of security which are specified in this clause.
>
> "It appears, therefore, to their Lordships that there "are considerations of public policy involved in this clause, "but it is also true to say, that those considerations of "public policy look to and deal with the management of "the bank, and have for their object the limitation of the "powers and authorities of the bank."

Our Supreme Court, therefore, has good authority for its decision, and it may be taken as a well settled principle now that a mortgage cannot be taken as security for a contemporaneous advance. I may further quote the remarks of Chief Justice Robinson in an earlier case:—

> "It is quite true that whenever the money is advanced "whether it be just before or at the time of making the "mortgage, then there is literally a debt due, but not a "debt contracted in the course of the business of the bank, "that is, of its legitimate and proper business, which the "lending money upon mortgage of real property certainly "cannot be, until the statutes are repealed or altered. "When it is shown that the mortgage in any case was "taken by a bank 'as an additional security for a debt "contracted to it in the course of its business'—then the "question occurs whether that can only be taken to mean "a debt that had been previously incurred with it in the "course of its business, or whether a mortgage may not be

"taken as an additional security for a debt that had no "previous existence, but which the bank was about to allow "a party to contract, by advancing him money at that "time in the proper course of their business......I think "it might perhaps be held that the spirit and intention of "the Act are not opposed to it, and that a mortgage so "taken might be upheld, when it appears that the mortgage "was really and in truth taken to secure the transaction "upon the bill, and not that the bill was created for the "mere purpose of upholding and giving colour to the "mortgage. That would be a question of fact, upon which "the conclusion that a jury might come to would be in "general so uncertain that I dare say the banks will not "think it prudent to risk their money on a real security "in any such case, where the nature of the transaction "might appear to be at all equivocal—so long, I mean, as "the present statutes continue in force."

Banks or their customers sometimes seek to evade the restrictions of the Bank Act, or to extend the provisons of Section 68 by interposing between the borrower and the bank, a third party as holder of the mortgage. For instance, the customer may obtain a solvent endorser acceptable to the Bank, to whom he may make out the mortgage. So long as the transaction remains merely one of discounting, no difficulty, of course, could arise; but should the mortgage be transferred to the bank, I am inclined to believe that grave doubt would be thrown upon the validity of the security.

It has, however, been held in Ontario that a similar transaction was not in violation of the Bank Act in force before 1890. In that case an endorser took a mortgage on real estate belonging to a Company to secure his endorsements of the Company's paper discounted by a bank. He assigned the mortgage to the Bank before the contemplated endorsements.

It would, however, be incumbent on the person attacking the bank's claim to show that the advance was in reality made on the security or the promise of the mortgage. Where an accommodation endorser paid to a bank a note that had been discounted, he was held entitled to a mortgage on real estate given by the maker to the bank as collateral. It was urged in review for the first time that this mortgage was null, as having been given for future advances. This claim was not allowed, not having been pleaded—or legally proved—(5 s.c. p. 135). The benefit of the doubt is sometimes given to the Bank on the presumption that its officers knowing the law, would not readily disobey its provisions, and when a customer who had deposited title deeds with a bank, swore that the mortgage thereby created was to secure future advances, while the manager of the bank declared that it was an additional security for a past indebtedness, the Court accepted the Manager's evidence against that of the customer. (Royal Can. Bk. vs. Cummer, 15 Grant 627.)

In that case the mortgage was created by the deposit of the title deeds of the property with the bank—a procedure that is known as an "equitable mortgage."

I have so far used the word "mortgage" in a general sense to include both true mortgages as known in the English law, and hypothecs as we have them in this Province, though these deeds are essentially different. The mortgage transfers the ownership of the property, leaving the mortgagor the right to redeem by payment within the stipulated time; the hypothec on the contrary does not affect the ownership, but merely gives the mortgagee a right of pledge on the property.

An equitable mortgage, is therefore unknown in the Province of Quebec. A hypothec cannot be granted otherwise than by acts in authentic form, that is executed before a notary, and it is not valid unless the deed specially describes the immoveable hypothecated.

An equitable mortgage may be effected without a writing or any formality, beyond the mere deposit of the title deeds with the lender. The mortgagee has security in that case, in so far as it is difficult for the borrower to dispose of the land, or to create a legal mortgage without access to the deeds. But should a subsequent legal mortgage be made, it would have priority over the equitable one. It is said that a legal mortgagee who makes an advance without notice of a prior equitable title is a purchaser for value without notice, and may hold even against a prior equitable mortgagee. But if a man takes a legal mortgage without asking to see the deeds, or on doing so being put on, by accepting an unsatisfactory answer he will in ordinary cases not be allowed priority over a prior equitable mortgagee who has got possession of the deeds.

The possession of the deeds, therefore, constitutes a very considerable safeguard. The doctrine of constructive notice, within specified and reasonable limits, comes into operation. A man does not acquire a thing honestly if he takes no steps whatever, to satisfy himself whether the person he takes it from can honestly part with it, or shuts his eyes to circumstances tending to show that such is not the case.

On the whole, it does not seem that equitable mortgages would be satisfactory securities for the protection of banks, and the undoubtedly wiser course would be to insist on a formal legal mortgage, whenever such collateral is offered.

The section you will notice authorizes the bank to take mortgages of personal or moveable property, as well as of real or immoveable, that is it may take chattel mortgages as security for debts contracted to the bank in the course of its business. This permission applies only to the other provinces, as the chattel mortgage is unknown in our law. It might be contended that, as the Bank Act, under the authority of the Tennant case, overrides the Civil law, this section validates chattel mortgages in the Provinces of Quebec. But the section is facullative or permissive, and is not absolute as is section 70, which declares that the bank shall have priority over the unpaid vendor. It does not appear, at all events, that any of our banks have had the courage to test so liberal an interpretation of the Act, by asserting their right to take a chattel mortgage.

But in the other Provinces these mortgages afford the banks very considerable protection, and if their execution does not constitute a fraudulent preference, the bank may hold the goods affected against all comers.

A debtor to a bank mortgaged to it certain stock in trade, and all future stock to be acquired during the currency of the mortgage, and assigned books debts and agreed to assign all future book debts of the business as security for the debt to the bank. The chattel mortgage, besides the usual proviso for redemption, seizure and sale in case of default, etc., and for application of the proceeds, and covenants for payment, contained a covenant on the part of the bank to pay the then commercial indebtedness of the mortgagor, and the expense of running the business out of the proceeds of the sale of the stock and the book accounts and debts, but not so as to increase the then indebtedness to the bank, all money received being paid into the bank. When default occurred the bank took possession and sold, there not being enough to pay what was due to it. It was held that the securities taken were valid under the Bank Act (R. S. C. 120) and that the debtor could not compel the bank to pay the other creditors or to share with them. (Gillies & Commercial Bank 10 Man. 460).

S. 69: Purchase of Lands:

The bank may purchase any lands or real or immoveable property offered for sale under execution, or in insolvency or under the order or decree of a Court, as belonging to any debtor to the bank, or offered for sale by a mortgagee or other encumbrancer having priority over a mortgage or other encumbrance held by the bank, or offered for sale by the bank under a power of sale given to it for that purpose, in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property which it may so purchase, and may acquire a title thereto as any individual purchasing at Sheriff's sale, or under a power of sale, in like circumstances, could do, and may take, have, hold and dispose of the same at pleasure."

It will be noticed that this section authorizes the bank to buy in three cases.

When the property is offered for sale:

1. Under execution.
2. By the mortgagee having priority over the bank.
3. By the bank under power for sale.

As the law of the Province of Quebec does not give a mortgagee any power to sell under a power of sale, banks here can acquire the property only under the first division. If the bank itself hold the mortgage, it is necessary in all cases for it to take what is known as an hypothecary action, and then have the lands seized and sold by the sheriff, unless they are brought to sale by some other execution creditor. The plaintiff or any other creditor may buy the property at sheriff's sale.

In the other Provinces the bank may purchase under any of the three circumstances. The bank may buy the property even when it is offered for sale by itself under a power of sale, and in this respect banks enjoy a greater privilege than ordinary mortgagees, who when they exercise the power of sale cannot become the purchaser either directly or indirectly.

S. 70: Absolute Title Acquired:

"The Bank may acquire and hold an absolute title in or to real or immoveable property mortgaged to it as security for a debt due or owing to it, either by obtaining a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, and may purchase and acquire any prior mortgage or charge on such property."

We have already on more than one occasion during the course of these lectures called attention to the distinction between a mortgage under the English law and a hypothec under ours. As a hypothec is a mere pledge and leaves the ownership and title with the mortgagor, the bank's remedy in case of default is to get judgment, seize and sell the property. Consequently the terms "equity of redemption" and "foreclosure" are unknown in this Province, and the means of acquiring the property referred to in this section are not applicable to hypothecs. While then banks in this Province can acquire a title to lands mortgaged to it only in one way, that is by purchasing at sheriff's sale, in the other Provinces a title can be acquired in four ways, that is by purchase in three different circumstances, and by release of the equity of redemption or foreclosure.

To enforce the principles of sound banking to which we referred at the beginning of this lecture, the Section in the second paragraph of Section 70, provides that the bank shall not hold any real property howsoever acquired—except such as is required for its own use—for more than seven years. To protect the bank, however, in a time of depression, the Treasury

Board may extend this period for five years—making the maximum twelve years.

Infringement of this provision entails forfeiture of the land to the Crown. This penalty was introduced early in 1900, but as it was made retroactive it now applies to all property so held by banks.

We may conclude the subject of mortgages by reading:—

S. 72: Advances for Building Ships:

> "Every bank advancing money in aid of the building "of any ship or vessel, shall have the same right of acquir- "ing and holding security upon such ship or vessel, while "building and when completed, either by way of mortgage, "hypothec, hypothecation, privilege, or lien thereon, or "purchase or transfer thereof, as individuals have in the "Province wherein such ship or vessel is being built, and for "that purpose may avail itself of all such rights and means "of obtaining and enforcing such security, and shall be "subject to all such obligations, limitations and conditions "as are, by the law of such Province conferred or imposed "upon individuals making such advances."

It will be seen that the restrictions imposed on advances by banks on other kinds of property are removed, and the mortgage or other security may be taken either before or at the time of or subsequent to the advance, and either during the building or after completion of the vessel. It also allows the bank to purchase the vessel to secure its advances.

THE CANADIAN BANKING SYSTEM—WITH A COMPARISON OF ITS MOST IMPORTANT FEATURES WITH THOSE OF THE NATIONAL BANKING SYSTEM OF THE UNITED STATES.

As indicated by the title of this essay, it will not be my chief aim to make an elaborate and exhaustive comparison of our Banking System with that of the United States. But rather I shall endeavour to give, as clearly as I can, a description of the excellent system under which the business of banking is conducted in Canada. A secondary object will be to consider the important characteristics of the Canadian System, which are in most marked contrast with the principles and practice of Banking in the United States, and which give to our system many of the qualities of excellence it possesses. The subject of office routine and the internal workings and management of a bank, although of great interest and importance to those directly engaged therein, will not come within my province. And finally, I hope to suggest an amendment to, or improvement in, our Banking System, which seems to me most reasonable and urgent. For, although our system is undoubtedly an admirable one in many respects, events which have transpired in Canada during the last year would seem to indicate that not only is improvement possible, but that the need of a remedy for at least one weak point is urgent and imperative. And a study of the banking system in vogue in the United States, while convincing us of the great superiority of our own system in most respects, at the same time reveals the fact that, in their "government inspection" of banks, they have at least an imperfect remedy for the weakness in our own system to which I have referred. But I shall deal with this subject more fully at a later stage.

What then, without going into the history of our Bank Legislation, are the present conditions and regulations under which banking is carried on in Canada? In the first place, let us consider the steps to be taken by a company who wish to obtain the privilege of conducting a banking business. As in the case of any joint stock company seeking incorporation, application must be made to the Dominion Government to this end. In which application must be stated the amount of capital stock, name of the bank, the place where its chief office is to be situated, and the names of the provisional directors. The capital stock must in every case consist of at least five hundred thousand dollars, and shall be divided into shares of one hundred dollars each. The provisional directors are appointed merely for the purpose of organizing the bank. They open stock books at the chief place of business of the bank and elsewhere, in which books are recorded the subscriptions of persons who wish to become shareholders. So soon as at least $500,000 of the capital has been subscribed, and at least $250,000 has been paid to the Minister of Finance and Receiver-General, the Provisional Directors may, by public notice, call a meeting of the subscribers to the stock to be held at the bank's chief place of business for the purpose of determining the day on which the annual general meeting of the bank shall be held; and for the election of such number of directors, not less than five, who shall hold office until the next annual general meeting. Upon the election of these directors, the functions of the provisional directors shall cease. The next step is to obtain from the Treasury Board, a certificate authorizing the bank to issue notes (to a total amount not exceeding its paid up capital) and commence the business of banking. Upon the issue of this certificate the Minister of Finance and Receiver-General shall pay back to the bank, the amount of money deposited with him by it less an amount equal to 2½ per cent. thereof. This hold-back is placed to the credit of the "Bank Circulation Redemption Fund"—and in the following year a further contribution to this fund is demanded, sufficient to make the total amount deposited therein by the bank equal to 5 per cent. of its average note circulation during the preceding year. All banks are called upon to keep their contributions to this fund up to this average. And the total amount so deposited is available only for the purpose of redeeming the notes of a suspended Bank in case the assets of such bank are insufficient for that purpose. A further and very strong guarantee of the note issue lies in the fact that they shall be a first lien on the assets of a bank. In this connection it should be remembered that still further security is given to our bank note issues by what is known as the "Double Liability of Shareholders." That is, in case a failed bank's assets are insufficient to meet its liabilities, all shareholders may be called upon for a further contribution equal to the par value of the stock held by each. These three forms of protection to the note-holder have been found to give a security to our bank note issues which is quite perfect. And it is evident that this guarantee is obtained without withdrawing capital from circulation to be locked up in Government strong boxes in the shape of reserve deposits. This is one of the most excellent features of our banking system. If we turn to the United States, we find quite a different state of affairs in this respect. Their National Banks are allowed to issue notes to the amount of their paid-up capital (less a small charge to cover cost of printing); but this capital is deposited with the Government in exchange for United States Bonds, and so passes out of the bank's hands and becomes, so far as it is concerned, "dead capital."

Now, to come back to our main subject, what is the business of a bank? Broadly stated, it is to receive money on deposit (for which it may or may not pay interest) and to lend that money at a higher rate of interest to whoever is able to give reasonable security that the loan will be repaid. The right to issue notes which shall circulate as money, although a very profitable part of a bank's business, and a matter of great importance to the country, is, after all a subsidiary function—one which has been evolved in the course of development of the bank's real business as a borrower and lender. A bank also performs great service as a collector of debts due and as a depository of valuables; but its real *raison d'être* is to receive deposits from the public and to loan the same to those whose business requirements demand more capital. As a receiver of deposits, practically no limitations are set to its business. For a bank may receive deposits from any person whomsoever, "whatever his age, status or condition in life and whether such person is qualified by law to enter into ordinary contracts or not." It is as a lender of money that its functions are limited. For here the law very wisely defines what advances a bank may properly make—and the kinds of security it may take for their payment; and at the same time makes clear that loans against certain other kinds of security must in no case be made. The aim is to secure as strong safeguards as possible for the public interest without unduly restricting the business in which a bank may legitimately engage. Speculation on the part of a bank in stocks, real estate or otherwise, is absolutely forbidden by law, and advances to those engaged in business of a speculative nature are discouraged. In Section 64 of the Canadian Bank Act we read,—"It (the bank) shall not, either directly or indirectly, deal in the buying, or selling or bartering, of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever; and it shall not either directly or indirectly, purchase or deal in, or lend money or make advances upon the security or pledge of any share of its own capital stock or of the capital stock of any bank; and it shall not either directly or indirectly, lend money or make advances upon the security, mortgage or hypothecation of any land, tenements or immovable property, or any ships or other vessels, or upon the security of any goods, wares and merchandise."

A bank may, however, acquire real and immovable property for its actual use and occupation, and it may also purchase lands or immovable property "offered for sale under execution, or in insolvency, or under the order or decree of a court as belonging to any debtor to the bank, or offered for sale by a mortgagee having priority over a mortgage held by the bank." The whole spirit of the law is to forbid the bank advancing money on securities, which although good in themselves, could not readily be converted into their cash equivalent should the funds be required at once. But when in its ordinary business a bank acquires such property as an additional security for debts due, it is recognized as having the same rights therein as would an individual in like circumstances. With this difference, however—"no bank shall hold any real or immovable property, however acquired, except such as is required for its own use, for any period exceeding seven years from the date of the acquisition thereof; but such property shall be absolutely sold or disposed of so that the bank shall no longer retain any interest therein unless by way of security."

Without considering more minutely the legal restraints put upon a bank as a lender of money, it will be readily seen that our Banking Legislation has been wisely directed, and reflects the knowledge of trained and experienced bankers whose advice and co-operation have at all times been earnestly sought and most considerately treated by our Legislators. But before considering the very important and, perhaps, the most distinctive feature of our Banking System, *i.e.*, that of "Branch Banks," I would like to refer to one other Government regulation which has to do with the matter of *dividends which a bank may pay* to its *stockholders.* Section 49 of the Bank Act of 1900 reads as follows:—"No division of profits, either by way of dividends or bonus, or both combined, or in any other way, exceeding the rate of eight per cent. per annum, shall be made by the bank, unless after making the same it has a rest or reserve fund equal to at least thirty per cent. of its paid-up capital; and all bad and doubtful debts shall be deducted before the amount of such rest is calculated."

Now, as the chief aim of the directors is to secure to the stockholders as large dividends as possible, the enactment cited above has proved a very strong stimulus to the building up of large reserve funds. So much so that in Canada to-day all the first-rate banks have reserves almost, or quite, equal to their paid-up capitals. And in the case of some, the former greatly exceed the latter. As one instance, the institution with which I am myself connected has a paid-up capital of $3,000,000, while its reserve fund is $5,250,000. This is an excellent state of affairs—for it gives to the banks a solidity and strength which have raised public trust and confidence to a very high level. And the economical and truly scientific management which has been essential to the building up of such enormous reserves (while at the same time paying good dividends to the shareholders) is a very strong guarantee of the ability of the banks to weather safely the financial storms which must almost of necessity come. For these reasons, and to this extent, the limitation of dividends by the Government has proven satisfactory and the results have been excellent.

We have now reached a stage in our subject where it seems to me well to recapitulate the main points of the ground already covered, before proceeding to consider the business in which a bank may engage and how admirably our "Branch Bank System" lends itself to that business. We have seen what are the first steps to be taken to secure incorporation; and that $500,000 is the minimum capital stock allowed; and that the total amount of notes issued by a bank must not exceed its paid-up capital. This note issue is exceedingly well guaranteed by three means, viz.:—by a first lien on the assets of the bank; by the "Bank Circulation Redemption Fund," and by the "Double Liability of Shareholders." In addition to the security thus given, our attention has been drawn to the fact that this security is obtained without withdrawing capital from circulation—herein lying one of the points of excellence of our system as compared with that of the United States. We have broadly stated a bank's function to be two-fold. It borrows from the public and loans at a higher rate of interest the funds so obtained. As a borrower, or receiver of deposits its operations are practically unrestricted by law; but in its capacity as a lender it must conform to many regulations and restrictions. The purpose of these limitations is to prevent dangerous speculations on the part of the bank with funds belonging to the public—and also to insure their investment in securities which are readily convertible into cash on the shortest notice when required. Hence the objection to a bank being a land owner or investing in other forms of immovable property. We have also noted the wisdom of the "limitation of dividend" to eight per cent. until a reserve fund of at least 30 per cent. of its paid-up capital has been built up—the result being that most Canadian banks to-day have reserves which compare most favourably with their paid-up capitals.

It will now be our purpose to consider in detail the more important forms of business in which a bank may engage—and to show that our Branch Bank system meets the requirements of our country's business in a manner that establishes beyond question its superiority over the American system of banking. In Section 64 of The Bank Act, the business and powers of a bank are thus defined:—"The bank may open branches, agencies and offices, and may engage in and carry on business as a dealer in gold and silver coin and bullion, and it may deal in, discount and lend money and make advances upon the security of, and may take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, Provincial, British, Foreign and other public securities, and it may engage in and carry on such business generally as appertains to the business of a bank." We have alrady seen that advances on the security of "goods, wares and merchandise" are forbidden. But an exception is made to this law in the case of wholesale manufacturers or dealers and shippers, to whom a bank may loan money on the security of goods or wares manufactured or in process of manufacture, or in the possession of such wholesale dealer or shipper. In such cases, however, the bank must see that the hypothecation of such goods is properly made out as set forth in a schedule to the Act, and that the goods assigned are clearly described and the place or places where they are, set forth. Such goods may be removed and other goods or wares substituted therefor, and those so substituted shall be covered by such security as if originally covered thereby, provided always that the substituted goods are of substantially the same description and value as those for which they have been substituted.

Except in the larger centres of trade this form of an advance is seldom met with; as, in the usual course of business goods have actually been sold and are either in course of shipment to the purchaser, or have been stored by the seller preparatory to shipping before an advance is required thereon. In such cases the security offered the bank usually takes the form of a "Bill of Lading," or a "Warehouse Receipt." In the former case the goods are shipped assigned to the bank's order and, until paid for by the purchaser, they are the property of the bank, which, in case of non-payment, may sell the goods to recover the loan it has made against them. In the latter case the "Warehouse Receipt" is given not by the owners of the goods, but by the keeper of the warehouse in whose custody they are kept until an order of the bank authorizes the removal of any part of them for which it has received payment. Severe penalties are imposed on anyone guilty of wilfully making any false statement in a warehouse receipt or bill of lading; and "all advances made on the security of any bill of lading or warehouse receipt, shall give to the bank making such advances, a claim for the repayment of such advances on the goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over, the claim of any unpaid vendor; but such preference shall not be given over the claim of any unpaid vendor who had a lien upon such goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt or bill of lading, unless the same was acquired without knowledge on the part of the bank, of such lien."

It is evident from the foregoing that the business in which a bank may legitimately engage is clearly defined, and also that a close adherence to these rules on the part of the bank will insure for the latter ample recognition of its rights.

For the purpose of this paper, a further consideration of the legal aspects of our banking system is unnecessary. And indeed, such consideration to be comprehensive and complete would require a volume in itself and would call for a profound knowledge of commercial and civil law. But I trust we have caught enough of "the spirit" of our Banking Law for our immediate purpose—and with this in mind let us see how our "Branch Bank" system lends itself to the business requirements of our country.

The financial growth of Canada during the past ten years has been indeed remarkable—and the past two or three years have witnessed such a marvellous development of our material resources that it does not require the insight of a "student of affairs" to appreciate the fact, at least to some extent. The press and the politician have painted glowing pictures of our vast resources and possibilities in the west; and the public consciousness of " Canada's Awakening " is now very real and very potent. A period of such rapid growth as we have experienced marks an epoch in the life of an individual, a corporation or a nation. And unless the strength is husbanded—and a gradual and wise adjustment to the new conditions is effected, the crisis will have a disastrous turning. Now, in our Branch Bank system, I believe, we have a force whose influence is most salutory in this respect. For our banks' interests are national in character—and are inseparably bound up in our country's welfare. If their "spheres of influence " were purely local (as is almost invariably the case in the United States), we would not see the same efforts put forth by those in control of our banking institutions to keep in check the feverish spirit of speculation which prosperity breeds. The notes of warning sounded by our most conservative bankers from time to time, have been made effective by the power to put the principles preached into practice throughout the length and breadth of our land. A local bank, whose interest centres in its own immediate neighbourhood would not have the same keen interest in such a policy, nor the power to put such principles into practice.

In considering what are the advantages of the " Branch Bank " system, it would seem a natural course to examine first what are the advantages to the bank itself, and then what advantages it possesses for the general public. But so closely are the bank's interests bound up with those of the public, and so dependent upon them, that they are really identical, and I have preferred to so regard them in this connection.

A bank's business differs from that of other corporations in a most marked degree in respect to the mobility of its capital. That is to say, if it finds business unprofitable at one point it can readily withdraw from the field with practically no loss to itself; whereas a factory, mill or railroad in like circumstances would be face to face with extinction, or, at least, removal at a great loss. It is this fact which justifies a bank in its ventures of opening branches in all parts of the country, while such a policy on the part of most other businesses would probably prove disastrous.

In January of the present year there were in Canada 1,608 branch banks—of which about 175 were in the Maritime Provinces and the others scattered throughout Ontario and Quebec and the Western provinces. The main business of those in the eastern sections has been to gather up the deposits of the people whose opportunities for profitable investment have not kept pace with their ability to save. And the bank's western branches have supplied these savings where they were much needed for the development of the younger and more enterprising provinces. As water seeks its own level, so capital seeks the most profitable investment; and so perfectly does our Branch Bank system lend itself to the law of "Supply and Demand" that a practically uniform rate of interest throughout Canada results—and dearth of capital in one section of the country, while other sections are over supplied, is a condition of affairs which cannot exist with us (in the very nature of things) while in the United States it is the rule.

The influence which our Branch Banks exert, in this way, towards the obtaining of uniform money rates throughout Canada, is most beneficial to our business welfare. Indeed, the benefits have been so long enjoyed, and seem so permanently assured, that the public accepts them as matters of course, losing sight of the fact that our Banking System is very largely responsible for their existence. That such is the case we are convinced by a study of industrial conditions in the United States. So pronounced have been the money famines and the money gluts in that country from time to time, and existing simultaneously in different sections, that there have resulted panics and complete derangements of business of a seriousness unknown to this country. And of late years there has been much discussion of the reform of the currency to rectify these evils. But so long as they adhere to their "Local Bank" system, it is difficult to see what remedy can prove adequate. For the currency thus provided must, of necessity, prove inelastic and quite insufficient for the needs of a growing country whose conditions are constantly changing. When there is an over-abundance of capital in the Eastern States, and a lack of funds in the West, there is wanting the machinery which will quickly and automatically relieve the situation for both sections. And this machinery we possess in our Branch Bank system.

There is another feature of this system which, I believe, is very important, and worthy of consideration. Reference has already been made to the *National character* taken on by our banks as a result of the large part they play in the business life of our country. And this fact has a practical application to every community they serve, in this way, viz.—as a result of the very wide experience obtained in their extensive fields of operation, the banks acquire an intimate knowledge of business conditions *in all parts of the country,* and are thus able to give their clients reliable and valuable information in matters which would otherwise involve for the latter a larger element of risk. In times of rapid extension of our business limits and remarkable development of our material resources, such information is of great importance to all branches of trade. And the splendid opportunity our banks have of obtaining and imparting such knowledge and advice *should* result in a minimum of losses from unwise investment, or the careless and unwarranted granting of credit in the ordinary course of trade.

At an early stage in this paper, reference was made to a weakness in our banking system, for which a remedy should be provided. It would perhaps be more accurate to call it, not a " weakness in our system," but the lack of a safeguard and guarantee that the banks shall adhere to the regulations of that system. I refer to the absence of any external inspection of the affairs of the bank. It is true the bank has its own staff of inspectors, who are invariably trained and experienced bankers. It is also true that monthly returns to the Minister of Finance and Receiver-General are called for, in which is set forth a description of the bank's assets and liabilities. And special returns may be called for at any time by the Minister of Finance whenever, in his judgment, they are necessary to afford a full and complete knowledge of the bank's condition. Such returns are, of course, prepared at the head office of the bank, and are compiled from the returns received from all its branches. But it is a very easy matter for an unscrupulous general manager to make such misrepresentations in these returns, as will utterly deceive the Government as well as the public. He might, for instance, (as was done in the case of the defunct Ontario Bank) show a large sum which had been invested in a most unwarranted and purely speculative venture, as constituting part of "current loans." But an independent audit of the bank's books at its head office would make such deception impossible. Such an audit seems most desirable. The subject has of late been receiving considerable attention in banking circles, and it is to be hoped that our otherwise admirable system will be still further perfected in this respect. The need of such remedy seems more urgent when we reflect that in case of a bank becoming insolvent, its "winding up" is attended to entirely by the "Canadian Bankers' Association," which is an incorporated body, whose members are themselves the bankers of Canada. Not only does the Canadian Bankers' Association attend to the winding up of insolvent banks, but it oversees the note issue, and governs all Clearing-House management as well. It seems out of harmony with the spirit of our banking legislation—but is nevertheless true, that Canadian banks have sought and obtained the right to discipline themselves. For the wise and impartial exercise of this power in past years the Association deserves great credit—as well as for its educational efforts to develop and foster among bank men an interest in, and study of the higher phases of the profession.

With our note circulation so strongly guaranteed that of late years not a single bank failure has been attended with loss to the note holder; and with a currency of such perfect elasticity that the demand and supply automatically adjust themselves, our Banking System is indeed most admirable.

And the adoption of external inspection, which we must believe is only a question of time, will supply the one thing lacking to make that system quite perfect.

Bank of Nova Scotia,
Montreal, February 23rd, 1907.

A. H. M. HAY.

SOCIAL READJUSTMENTS.

It is a generally accepted theorem that honest differences of opinion do more to stimulate legitimate, intelligent growth than, possibly, any other one cause. The corporation of which all the directors live their official lives in an atmosphere of unimpeachable harmony is apt to pay for it by impaired dividends; the community in which no one section is opposed, more or less strenuously, to some other section, has probably nothing in its immediate future to warrant an investing belief in its vitality; the state whose citizens concede that political antagonism has been replaced by partizan rivalry, has passed the danger line of civic complacency

Hence the mission of discontent is quite as potent and necessary to normal life, be it industrial, civic or national, as the assuaging influence of prosperity and the lethargy it is apt tc engender, for discontent is a function of unrest and no widespread unrest has ever been stilled without some proportionate benefit to humanity, either in the form of an increase of man's knowledge of mankind or a readjustment of political and economic relations which, more or less consciously, has been a working out of some heretofor unrecognized or unacknowledged principle.

The younger peoples—we younger peoples, it is almost permissible to say—on whom the fetters of tradition bear less heavily, are, for a variety of reasons, the more facile in responding or, at least, in giving vocal utterance to national impulses whose origin lies, perhaps, in some deep-lying stratum on which our structure of state has been builded; perhaps, and equally often, only in the superficial detritus which our own generation has seen washed up against the foundations of government; nor can the wisest of our statesmen and the best-trained of our political students detect, with unfailing accuracy, the source of the immediate impulse which has alarmed and disturbed those who watch the trend of daily events. As in the body of this age—old earth from which we draw all our standards of comparison, all our means of understanding, so in the life we live on its surface; the perpetual, never-ending tendency towards concentration means an equally endless process of readjustment. Strata, undisturbed in their peaceful, acquisitive calm for centuries, are distorted to serve new purposes, are made to occupy strange and, to them, anomalous positions to the thunderous accompaniement of earthquake and eruption and the, at least temporary, discomfort of an outpouring of fiery and formless material which threatens, if it does not destroy, the last remaining landmarks which survived the original cataclysm. Such as it is, there is a modicum of consolation in the thought that time and the mellowing influences of a normal climate will ultimately tame the lava and ashes into productive and fertile fields, but time is long and the generations of men prone to live for themselves rather than for unborn descendants. Therefor since no structure of state, erected by human wisdom, may hope to survive intact the inevitable necessity of the centuries, ~~so~~ the part of wisdom lies in recognising the premonitory warnings of national seismic disturbances and in fore-sighted preparation which will make possible the re-building of the halls of government to conform to the new levels of the national landscape with the least possible delay.

In the interests of a contented humanity, it is a wise provision that the vision of mankind is as limited as it is, otherwise the forms of government, constructed by our fathers for our needs, would have been hopelessly askew for the conditions of their times and, in the light of our knowledge of future social convulsions, distressingly unscientific for the uses of the next generation. Better to build a palace for the state than house it in a hovel, even if the palace is doomed to destruction the next day.

And today there are threatening rumblings and angry jarrings enough, in all conscience, to make us look to the foundations we are building to fit Canada's destiny—as we see it. Religion itself, that great solid rock—unfortunately, not without its cleavage planes—on which all stable government must rest, is contributing more than its share of the tremors which warn us of coming disturbance. It is conceivable, at least, that in the division and sub-division of its surface into church forms, the percolating waters from the world of human activity have dissolved out an essential element here and deposited an unnecessary salt there until all homogeneity has been lost and the riven thing that meets our view preserves only in outward appearance the characteristics we believe it to possess. Within six months, we have learned from one great country how easily severed were the adhesions which bound its entire government to one form of religion and how readily national judgment accepts the proof of an act of constructive statemanship, though that act means the destruction of traditional sympathies of many generations.

But we do not need to go so far afield for equally convincing evidences of a coming readjustment. No priest or preacher of this generation has wielded a more potent influence or been a personal factor in the lives of more men and women than the Rev. Dr. Campbell, of London, and yet Dr. Campbell's boldly formulated "new theology" was but a step behind his avowal that, to him, Socialism was the only practical Christianity he could see in the world today and his enrolment as a "Christian Socialist." Many interesting and even vital phases phases of this pronouncement still await Dr. Campbell's explanation. For example, if pure Socialism means anything—the Socialism of Carl Marx—it means a practical application of certain economic principles and is a genuine political movement and nothing but a political movement. Hence there seems as little meaning in Dr. Campbell's calling himself a "Christian" Socialist as there would be in Sir Wilfrid Laurier's insisting that his party was the "Christian" Liberal party or Mr. Borden's dubbing his followers His Majesty's Most Loyal "Christian" Opposition. Possibly Dr. Campbell means to wage his fight on the issue of the actual existence or non-existence of any other militant Christianity, a course which would unquestionably be prolific in its results.

But to take an instance more directly in point, where the discontent at the present relationship between the Church and part of the State was voiced not from the pulpit but by one of the laity, let me quote the following paragraph from a public address delivered at Dayton, Ohio, by Mr. John H. Patterson, general manager of the National Cash Register Co., a concern which employs 6,000 individuals and has, in the past, been famous as much for its practical humanitarianism as for its business success. Mr. Patterson in referring to the seemingly hopeless corruption of modern civic life, said: "Preachers are doing nothing for humanity; their presence is an incumbrance and, through their smug, self-satisfied attitude, they make life difficult for those who are actually working for public betterment. While the clergy are talking about ancient history, dead men, mummies, death, damnation and mansions in the skies, the city is being overrun by gamblers, saloons, beggars, petty thieves and giant grafters." Strong words these, and full of portent.

Moreover, what is to be said of political stability when it can be openly bruited about and, what is more important, accepted tacitly as a possibility that two great financiers, Messrs. Harriman and Rockefeller, have allied their fortunes and their forces for the sake of "eliminating" no less a personage than the President of the United States? At least, the report was taken sufficiently seriously at the White House to draw a personal statement from Mr. Roosevelt himself, which is an honour not conferred on the generality of canards. With unassimilated millions, not the skimmings but the dregs of a dozen foreign peoples, fretting under new conditions, uncouthly testing their new-found "rights" and learning the first principles of freedom, not from institutions which they cannot understand but from the fire-brands of their own stock whom they can, what must be the moral effect of such an incident when the account, distorted to the measure of their own stunted intelligences, ultimately percolates to their level? Elimination is not, after all, a matter of methods, but of results, and the difference between a few ounces of dynamite and a few hundred millions of dollars is academic rather than ethical. In the rendezvous of the "Reds," in the herding-places of Letts and Huns as well as in the halls of the Socialist, we may be quite sure that this object lesson will be made the most of and will play its part, as have scores of its predecessors, in distorting the strata on which the Republic was founded.

Even at home, in staid, God-fearing Montreal, it was less than a month ago, that the Rev. Dr. Chown, eminent among the many distinguished clergymen of the Methodist Church, addressed the following illuminating sentences to the congregation which assembled to hear him at St. James Church: "There are many men in Canada today praying for the liquor prohibition and foreign missions, who are sucking their dividends out of the thin blood that flows in the veins of their under-paid employees. Every one with a sense of justice will applaud the brigand sooner than the business-man who grinds his fortune from the poor." It is inconceivable that such words could have been uttered without a full realization of their meaning and a careful consideration of the construction which would be placed upon them. "Sucking dividends from the thin blood of their employees" and "grinding fortunes from the poor" are phrases which, in spite of considerable repetition, still have the power to sting through shabby coats and to stir blood which, perhaps, lacks the fat of prosperity.

Whatever the present session of Parliament may have done to make itself famous, it is moderately certain to remain notorious for some years through its "women, wine and graft" discussion, and the veiled inuendo and mutual recrimination which inculpated members on both sides of the Speaker's chair. How far the life of public men is their private affair and how far their country's, is a question which cannot be settled by the looking up of authorities nor by parliamentary procedure. That it is a question in which the people of Canada are greatly interested, and which many of them believe is closely connected with the measure of efficiency of our present form of government, it has needed no acute ear to determine during the last few months.

And these are but a few of the many, many evidences the last year has brought forth of the stress and strain which complicate the problem of normal national growth. Procrastination—the soothing hope that "everything will be all right in time"—is not for a sturdy young people whose avowed mission is the conquest of the Twentieth Century. It is not a treatment of symptoms which Canada needs, but a diagnosis of causes and a prompt and intelligent acceptance of whatever that diagnosis shows to be necessary. Ida Tarbell, in summing up her twenty years of investigation of social and economic problems, recently said: "Social evils are due principally to the fact that people follow others instead of thinking for themselves. It has been imitative thinking that explains very largely how the United

States has been brought to its present blight of political and social corruption and consequent social unrest. What other explanation is there, indeed, for the long blindness and dumbness of great masses of good and disinterested men before the evils, the sorry result of which we see on all sides today—to bribery at elections, to political rings, to illegal and unfair business methods, to alliances between politics and commerce? Has it been anything but an indolent acceptance of things as they were that has kept our intellectual class as a body, silent so long to a class of evils which finally have made the United States the scorn of the world and which have given those who hate democracy reason to point triumphantly and say: 'Here is what your democratic institutions mean—freedom to rob and throttle one another?' "

JOHN S. LEWIS, JUN.

FORMATION OF CONTRACT.

Chapter II.

THE formation of contract takes place by "Offer and Acceptance"; in other words, a contract is formed when there is an unmistakeable mutual promise by each of two or more parties. The promise by the first party is called an "offer"; the agreement of the second party is called "acceptance"; and the "offer and acceptance" combined form the contract. But it should be noted that though the promise by the first party is called an "offer," and the second party is, from the legal point of view only regarded as "accepting" that "offer"; yet logically there is an offer (or promise) by both sides.

Let us take a simple case (which we have already considered) by way of illustration. A tram-car is running up and then down a certain thoroughfare. Its presence is a constant "offer" to the passers-by; and there is "acceptance" of that "offer" when any passer-by steps up and gets in. But it is important to observe that *logically,* the position of *each* party may be expressed by a (conditional) promise. Thus the proprietors of the tram-car, by the fact of its plying, may be represented as saying, "We promise to carry," while the passer-by at the very moment that he accepts the offer by getting on the tram-car, says, "I promise to pay." Moreover, each of these promises is really a conditional promise. The passenger says, "I will pay you, *if* you will carry me"; and the proprietors say, "We will carry you, if you will pay us." Thus, it is not the act of carriage or the act of payment which forms the contract, but the mutual promises to carry and to pay. The mere act has nothing to do with the formation of the contract, it is the mutual promise (legally known as "offer and acceptance)") which produces the result. Thus, in the case before us, neither the act of carrying nor the act of payment have any fundamental connection with the formation of the contract;

one may take place before the other, and *vice versa,* but the contract is formed at the time that the mutual promises are made. For instance, the passenger may conceivably pay at the end of the journey; none the less the contract was formed in this particular case when he accepted the offer by getting on the tram-car. But he might conceivably pay before the journey, as in the case where he had purchased a book of tram-car tickets. Let us suppose such a case. A man goes to the head office of a tram-car company, and asks for a "book" of one dozen tram-car tickets. Now, by issuing such "books" the proprietors are constantly making an *offer* to the public, and that offer is *accepted* by this particular individual the moment he asks for the book of tickets. At that moment he promises to pay, and the contract is complete (so far as the *formation* is concerned). The contract, that is to say, is formed before the man has paid for the book, and possibly a week before he uses any one of the tickets. A mere act then has nothing to do with the *formation* of contract, it is the mutual promise on either side, technically known as "offer and acceptance." It is important to note this because an act may sometimes be simultaneous with the acceptance, and none the less it is not the act but the promise which is the essence of the formation.

Take, for instance, a penny-in-the-slot machine: by which penny cigarettes are sold. The proprietor of the machine makes a constant (conditional) offer to the public. He virtually says, "I will give you one cigarette, if you will give me one penny." *The moment that offer is accepted by any of the public, the contract is formed.* Now it so happens that in this particular case the offer is accepted by putting a penny in the slot. But it is not the payment of the penny, but the acceptance of the offer which forms the contract; though it so happens in this case that the two are *in time* identical. This will be clearer if we see what the purchaser really says. He virtually says, "I will give you one penny, if you will give me one cigarette." But the only way by which he can make the proprietor know of his promise, is by dropping the penny into the machine; therefore he drops it in. But it is not the payment, but the promise which binds the contract. Suppose, for instance, that the purchaser put in two half-pennies. So far as mere payment is concerned, he has fulfilled it; but he cannot sue the proprietor when the slot gives him no cigarette, for the reason that he (the purchaser) has not kept his promise (of giving *one* penny.

It is true that in this particular case the act of payment is the outward and visible sign of the promise to pay, and the only way by which it so happens that that promise can be expressed; but the important point to note is that it is not the act of payment, but the promise to pay (though that promise is here expressed by the act) which leads to the formation of the contract. Thus we may lay down two general rules, namely,

(1) *"Every contract springs from the acceptance of an offer."*

(2) *"An offer or its acceptance or both may be made either by words or conduct."*

We must now consider the subject of communication. As regards both "offer" and "acceptance" there must be communication to the other party (by words or conduct) to bind the contract. Thus, if Smith wishes to get a piece of land ploughed, and Jones, knowing of Smith's wish, but without communicating with Smith, goes and ploughs the land, he cannot sue Smith for the value of the work. In this case there is, of course, not even an offer, but even if there had been, there would be no contract formed, unless the acceptance were communicated to the offeror (*i.e.*, the party who made the offer). But if Smith saw Jones ploughing the land, and allowed him to proceed, his acquiescence would probably be regarded as acceptance by conduct of the work done. Similarly with regard to acceptance. Thus, in the case of Felthouse *v.* Bindley, Felthouse had written to his nephew offering to buy his horse, adding, "If I hear no more about him I shall consider the horse is mine at £30 15s." The nephew sent no reply, but told an auctioneer named Bindley to keep the horse out of a sale of his farm as his uncle had bought it. Bindley by mistake sold the horse, and the uncle sued him for wrongful dealing with his property. But the Court held that as no acceptance had been communicated there was no contract, and that therefore the horse was the nephew's and not the uncle's at the time of the sale of the farm stock. This case represents an important principle; and all those who make written offers should be careful to ask for a reply, and not (from a mistaken idea of saving trouble) exonerate the other party from the duty of replying. If Felthouse had written, "Please reply by return," he would have got his horse, and not have figured in an unsuccessful lawsuit!

There is one other elementary rule with regard to communication of acceptance, which is nothing more than common sense expressed in a legal form. It is thus stated by Sir W. Anson. "Acceptance is communicated when it is made in a manner prescribed, or indicated by the offeror." Thus, if Smith sends a letter containing an offer to Jones by one of his (Smith's) servants, and Jones sends a letter of acceptance back by the same servant, if the letter is lost by or stolen from the servant, nevertheless there is a communication of the acceptance to Smith, and the contract is formed. This imaginary case illustrates the general principle, on which we shall have more to say when we consider the subject of contracts made by post.

Again, *the acceptance of an offer must be identical with the terms of the offer.* If I offer to sell you a horse for £50, and you in reply offer to give me £45 for it, there is no contract. I have made an offer, and you, *by the very fact of your making a counter-proposal,* have refused it. You canot sue me for breach of contract if you afterwards offer to give me £50 for the horse and I refuse it.

We may express this rule in another way and say, "An offer followed by acceptance is binding; an offer followed by non-acceptance is not binding." If we express the formula in this way, we perhaps arrive at the real difference between an offer made by word of mouth, and an offer made by post.*

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* This difference is recognized by the German Commercial Code. (Articles 318, 319). "When a commercial contract is proposed between parties present at the same time, the acceptance must be immediate; otherwise the proposer is no longer bound to his proposal. When a proposal is on foot between parties at a distance, the proposer remains bound until the time at which he may fairly expect an answer to reach him if despatched in ordinary course and in due time."

If Smith, meeting Jones, offers to sell him a valuable book for £5, and then says he will keep the offer open for a week, he will nevertheless legally (though, of course, not in honour) be able to sell the book for a higher price before the week is out to a third party, because there is no "consideration" for keeping the offer open. [If Jones, on the other hand, says, "I will give you a shilling to keep the offer open for a week," and Smith accepts the shilling, then Smith will be bound]. But if Smith, instead of meeting Jones, writes him offering to sell him the book for £5, the offer is binding on Smith provided Jones answers in a reasonable time.

Thus, in the leading case of Dickenson *v.* Dodds, the defendant, John Dodds, on Wednesday, the 10th of June, 1874, signed and *delivered* to the plaintiff, George Dickenson, a memorandum, of which the material part was as follows:—

"I hereby agree to sell to Mr. George Dickinson the whole of the dwelling-houses, garden ground, stabling, and outbuildings thereto belonging, situate at Croft, belonging to me, for the sum of £800. As witness my hand this tenth day of June, 1874.

(Signed) John Dodds.

£800.

P.S.—This offer to be left over until Friday, 9 o'clock a.m., (the twelfth) 12th June, 1874.

(Signed) J. Dodds."

After making this offer, Dodds, nevertheless, on the following day sold the house to a third party (named Thomas Allan). The question was whether Dickinson could sue for specific performance of the contract. Vice-Chancellor Bacon held that he could; but when the defendant appealed against this decision the Court of Appeal unanimously held that the decision was wrong, and James, L.J., in delivering his judgment, quoted the memorandum, "This offer to be left over until Friday, 9 o'clock a.m., 12th June, 1874," and added, "That shows it was only an offer. *There was no consideration given* for the undertaking or promise, to whatever extent it may be considered binding, to keep the property unsold until 9 o'clock on Friday morning;

but apparently Dickinson was of opinion, and probably Dodds was of the same opinion, that he (Dodds) was bound by that promise, and could not in any way withdraw from it, or retract it, until 9 o'clock on Friday morning, and this probably explains a good deal of what afterwards took place. *But it is clear settled law, on one of the clearest principles of law,* that this promise being a mere *nudom factum"* [*i.e.,* a promise without a consideration to support it] "was not binding and that at any moment before a complete acceptance by Dickinson of the offer, Dodds was as free as Dickenson himself.

Now it should be particularly noticed in this case that Dodds had made the offer to Dickinson, at first hand. When Dodds delivered to Dickinson the memorandum he did so (to quote Vice-Chancellor Bacon) in "compliance with the plaintiff's request that there should be some time allowed him to determine whether he would accept it or not." In other words, there was an offer followed by non-acceptance, and there was obviously therefore no consideration for the time allowed. But supposing Dodds, without seeing Dickinson, had written and posted to him a letter as follows: "To Mr. George Dickinson, Dear Sir. I hereby offer to sell you the whole of the dwelling-houses, garden ground, stabling, and out-buildings thereto belonging, situate at Croft, for the sum of £800.

June 10th, 1874. (Signed) JOHN DODDS."

In that case it is clear that if Dickinson had replied by post in a reasonable time that the contract would have been binding, and that Dodds could not have sold the land to Allan. Suppose, for instance, that Dickinson had replied by return of post, "To Mr. John Dodds, Dear Sir, I accept your offer and enclose a cheque for £800 herewith. Signed, George Dickinson. June 11th, 1874"; and had posted the letter of acceptance at 11 a.m. on the Thursday morning, so that Dodds in the natural course of events would receive it on Friday. The moment the letter of acceptance was posted, the contract would be complete, and this even (it seems) if it were subsequently lost; so that Dodds, under those circumstances, if he had attempted to sell the property in the interval between the posting of his offer and a reasonable time for a reply could not have sold it legally, and would have been liable in a suit for specific performance.

The above case is a most important one for business men to remember, and there are two points which should be specially noted by all engaged in any kind of business. (1) Whether you are making or accepting an offer, a mere promise by the offeror to keep the offer open for a day, week or month is not binding on him excepting in honour, and is not worth the paper it is written on from a legal point of view. But (2) *the promise can be made binding if the person, who wishes to have time before he accepts, offers the smallest "consideration" to keep the promise open.* For instance, if Dickinson had known the law, he could easily have kept the offer open by giving Dodds a "consideration" of say, half-a-crown; and by getting him to write a post-script in some such terms as follows: "P.S.—I hereby agree to leave this offer open until Friday, 9 o'clock a.m., the 12th (twelfth) of June instant, in consideration of the sum of 2s. 6d., the receipt of which from the said George Dickinson I hereby acknowledge.

(Signed) J. Dodds."

The amount of the consideration given is practically immaterial, probably a penny would be sufficient. The law leaves to the offeror to determine what value he puts on the fact that he keeps the offer open; it practically says to him, "there must be some consideration for keeping your offer open, or I shall not bind you to your promise; but if you only value the delay at one penny, that is your lookout."

We have seen from the illustrations given that, generally speaking, an offer is made to an ascertained person. This is not, however, always necessary (cf. the case of a tram-car). In the case of rewards offered for finding a lost article and the like, the offer obviously cannot be made to an ascertained person, but there is no contract till it has been accepted by an ascertained person. Thus, if I offer a reward of £1 for a valuable ring which I have lost, the contract is binding on me when any person claiming the reward *brings me the ring.* The identity of the acceptor is ascertained by the very fact of his bringing me the lost article; and if I refuse to pay him, he can sue me for breach of contract.

Thus, in the case of Carlill *v.* The Carbolic Smoke Ball Company, a reward of £100 had been offered by the company to any person "who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks, according to the printed directions." Mrs. Carlill had purchased a ball and followed the directions; and having contracted influenza she sued the company for the £100 which they now refused to pay. It was held that she was entitled to payment. The moral is: *No tradesman should offer a reward* (as an advertisement or otherwise) *which he does not intend to pay.* In such a case the principle, not only of honour, but also of law will compel him to perform his part of the contract.

We may now turn briefly to a special subject, namely, contracts formed by letters sent through the post. Now, a general rule may be laid down in these terms. "The post office is the ordinary mode of communication, and every person who gives anyone the right to communicate with him, gives him the right to communicate in an ordinary manner." The leading case on this subject is Adams *v.* Lindsell, (1 Barnwell & Alderson, p. 681), which demands attentive consideration. Lindsell, who was in partnership with another person as a dealer in wool, at St. Ives, Huntingdon, wrote on Tuesday, the 2nd of September, 1817, to the plaintiffs (the firm of Adams & Co., who were woollen manufacturers at Bromsgrove, Worcestershire), as follows: "We now offer you eight hundred tods of wether fleeces, of a good fair quality of our country wool, at 35s. 6d. per tod, to be delivered at Leicester, and to be paid for by two months' bill in two months, and to be weighed up by your agent within fourteen days, *receiving your answer in course of post.*" The letter was misdirected *by the defendants* (the firm of Lindsell) to Bromsgrove, Leicestershire, so that it did not reach the plaintiffs till 7 p.m. on Friday, September 5th. On that evening the plaintiffs wrote accepting the offer, but their letter was not received by the defendants till Tuesday, September 9th. [It must be remembered that this was in the days of coaches, and that Sunday intervened]. On the day before receiving the letter of acceptance, *i.e.*, on Monday, the 8th, the defendants not receiving an answer, sold the wool in question to another person. It was held that "the delay having been occasioned by the neglect of the defendants, the answer did come back in due course of post," and the plaintiffs accordingly recovered a verdict. To the argument by the defendants' counsel [the technical name for the barristers who were conducting the defendants' case] "that there could be no binding contract between the parties, till the plaintiffs' answer was actually received," the Court replied as follows: "If that were so, no contract could ever be completed by the post. For if the defendant were not bound by their offer when accepted by the plaintiffs till the answer was received, then the plaintiffs ought not to be bound till after they had received the notification that the defendants had received their answer and assented to it. And so it might go on *ad infinitum.* The defendants must be considered in law as making, during every instant of time their letter was travelling, the same identical offer to the plaintiffs; and then the contract is completed by the acceptance of it by the latter. Then, as to the delay in notifying the acceptance, that arises entirely from the mistake of the defendants, and it therefore must be taken as against them, that the plaintiffs' answer was received in course of post."

Two other cases may be briefly quoted. In Dunlop *v.* Higgins a letter of *acceptance* was delayed in the post. It should have arrived at 8 a.m., but did not reach the *offeror* till 2 p.m., nevertheless the contract was held binding on him, and Lord Cottenham, the Lord Chancellor, said: "If the party accepting the offer puts his letter into the post *on the correct day* has he not done everything that he was bound to do? How can he be responsible for that over which he has no control?" It shall be particularly noticed that in this case the answer was posted not by the earliest possible post, but in business hours on the same day when the proposal was received. The answer then must be made without unreasonable delay; but this case proves that *for a man to take an hour or two for reflecting over the offer before he accepts it is not an unreasonable delay.* And even if the letter of acceptance be lost in the post, provided it be posted in a reasonable time, the contract is binding on the offeror (and, of course, also on the acceptor). This was decided in the case of Household Fire Insurance Co. v. Grant ,and is accordingly now law, though Lord Justice Bramwell (one of the three judges) held that the decision was a mischievous one, and would probably be made nugatory by every prudent man, saying, "Your answer, by post, is only to bind me if it reaches me." This decision then is one which should be particularly noted by business men. If you make an offer by post, you will be bound by an acceptance by post, even though the letter of acceptance does not reach you. This is now the law. If, however, you think it harsh or inequitable, you have an easy remedy. All you have to do is to adopt Lord Bramwell's advice and write as follows: "I shall expect your answer by return of post, and please understand that your acceptance, should you accept, is only to bind me if it reaches me *by return of post.*" If such words were used, the offeror would not be bound by a letter of acceptance which went astray; because by the special conditions of his offer he would have contracted himself out of the general liability which under the rule laid down (in Household Fire Insurance Co. *v.* Grant) he would otherwise have incurred.

Consideration.

We must now examine the subject of consideration, on which we have already touched, somewhat more closely. The cases we have hitherto noted have been chiefly of *pecuniary* "consideration," as represented by actual money value; but of contracts money is generally the "consideration" given by one of the parties. The best definition of what is a "consideration" in English law is given in Currie *v.* Misa, as follows: "A valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party; or some forbearance, detriment, loss, or responsibility, given, suffered or undertaken by the other."

The leading case of Bainbridge *v.* Firmstone well illustrates the latter part of the definition. Firmstone borrowed two boilers of Bainbridge, as he desired to weigh them, on the terms that they were to be given back in as good condition as before. Firmstone took the boilers to pieces and returned them without putting them together again. For this Bainbridge sued him, and it was held that Firmstone was liable for the following reason: "The *consideration* is that the plaintiff, at the defendant's request, had consented to allow the defendant to weigh the boilers. I suppose the defendant thought he had some benefit; at any rate *there is a detriment to the plaintiff* from his parting with the possession for even so short a time."

We must now note another point. The "consideration" for a contract cannot be used by a third party, *i.e.,* "no stranger can take advantage of a contract made with another person" (even if the contracting parties have agreed that he may). This point was finally settled in the case of Tweedle *v.* Atkinson. John Tweedle and William Guy (the son of the former being married to the daughter of the latter) had made the following agreement:

"High Coniscliffe, July 14, 1855.

"Memorandum of an agreement made this day between William Guy, etc., of the one part, and John Tweedle, of the other part. Whereas it is mutually agreed that the said William Guy shall and will pay the sum of £200 to William Tweedle, his son-in-law, railway inspector, residing in Thornton, in the county of Fife, in Scotland; and the said John Tweedle, father to the aforesaid William Tweedle, shall and will pay the sum of £100 to the said William Tweedle, each and severally, the said sums on or before the 21st day of August, 1855; and it is hereby further agreed by the aforesaid William Guy and the said John Tweedle, that the said William Tweedle has full power to sue the said parties in any Court of law or equity for the aforesaid sums hereby promised and specified."

William Guy died without paying the money, and William Tweedle (the son-in-law) sued Atkinson, Guy's executor. But he failed in his suit, the reason being that he "was no party to the contract."

There is another very important point in respect to "consideration." The "consideration" for a promise may be either present or future; *it must not be past.* Let me take an illustration to show what is meant. Let us suppose that Smith, a grocer, has received from Jones, a wholesale merchant, goods to the value of £20. Jones not being paid for some months, writes pressing Smith for payment, and Smith writes in reply: "To H. Jones, January 5th, 1907, Dear Sir, I am sorry not to have settled your account before, but will undertake to pay it in full in three months from date. Yours truly, W. Smith." Now, Jones cannot sue Smith *on this promise.* It is true, of course, that Smith owes him £20; but that "consideration" is past, and there is no *present* "consideration" for the undertaking to pay contained in Smith's letter. Jones, of course, has a remedy supposing Smith does not pay him. He can sue him for debt. *But the point to be noticed is that he cannot sue him on the gratuitous promise contained in his letter,* because although there was a consideration, that consideration is past.

But there is an exception to this rule in the cases of bills of exchange, cheques (and promissory notes), and this is one reason why they play such an important part in commerce. These instruments will support a past consideration. Thus, if Jones can get Smith to draw a bill in his favour at three months after date, then if Smith does not pay, Jones can sue him on the bill, which in the meantime he can get discounted, *i.e.*, in this case he can turn Smith's promise into money.

R. E. MACNAGHTEN.

(To be continued.)

QUESTIONS ON POINTS OF PRACTICAL INTEREST.

Garnishee of an Account—Can a Bank Charge Up a Current Note.

QUESTION.—A customer of a bank is an obligant on a note not yet due, and standing at his credit is a sum of money which is garnisheed before the due date of the bill. Has the bank any claim to the money?

ANSWER.—No; the garnishee order covers all moneys due or accruing due at the time it is served. Furthermore, the bank could not assume that the note would not be paid at maturity.

Savings Banks Cheques—Should They Be Returned?

QUESTION.—A Savings Bank Customer wishes his cheques for the year 1894.

1. Are we obliged to surrender them?

2. If so, can we charge a reasonable fee for searching for them?

ANSWER.—1. Savings Bank accounts as a rule are subject to withdrawal by receipt on the production of the pass book. Any deviation from this custom should be granted as a favour to the customer. We do not, therefore, consider the bank obliged to surrender the vouchers, whether they are receipts or cheques.

2. If the client were a valued one, or if the vouchers were required for some special purpose, the bank might accede to the request. Whether the Bank should charge a fee for the time and labour would depend upon the special circumstances of the case.

Shareholders Deceased—Power of Attorney to Transfer Stock.

QUESTION.—A power of attorney to transfer the shares of a bank was given by a shareholder to John Smith, who, upon the decease of the shareholder, sold and transferred the shares under the power of attorney. Notice of the death of the shareholder had not been received by the bank officials.

1. Is the bank protected from loss in the event of John Smith not being entitled to the proceeds of the stock?

2. If the power of attorney were dated two years prior to the transfer, is the bank justified in acting upon the Power of Attorney?

ANSWER.—1. We are of the opinion that the bank was within its rights in permitting the transfer, lacking notice or knowledge of the death of the shareholder.

2. We think the bank should have inquired of the shareholder before making the transfer, as to why the power of attorney was dated so far back. The bank is entitled to reasonable time to decide upon making transfers. (See MacLaren's Banks and Banking, page 64).

Cheque Endorsed—Deposited to the Credit of ——

QUESTION.—A cheque is handed in for deposit to the Bank of Y., upon which the accountant writes the following endorsement:—

"Deposited to the credit of William Thompson,
A. B. C., Accountant."

1. Is this endorsement legal; such endorsement being guaranteed by the Bank of Y.

2. Would the Bank of Y. be liable for any loss arising out of the lack of the payee's own endorsement, if, for instance, the cheque were given in connection with a transaction involving another payment of a larger amount which became due upon the payee, William Thompson, accepting the first cheque?

Answer.—1. By usage, banks accept the above in lieu of the payee's endorsement, although the practice is open to objection. (See Question 134).

2. A bank would not take on deposit a cheque unendorsed, and place it to the credit of a customer without knowing that it was the customer's wish that the amount should be so deposited.

If the Bank of Y. took the cheque and deposited it to the credit of William Thompson without his authority, we think the bank would be liable for damages.

Bill for Collection—Dates of Acceptance—Held After Due Dates.

Question.—A sight draft is sent by a bank at A. for collection to a bank at B., with instructions "N. P." The drawee dates his acceptance two days after presentation. The draft is held several days overdue without any notice of dishonour being sent to the bank at A., and in the meantime the drawee assigns.

1. Is the bank at B. liable for the delay in procuring acceptance of the draft?

2. Is the bank at B. liable for not returning the bill, or for not sending notice of its dishonour?

Answer.—1. By section 42 of the Bills of Exchange Act, the drawee has forty-eight hours in which to accept a draft, and, therefore, there can be no legal objection to the delay in his acceptance, providing, of course, that it does not exceed forty-eight hours.

2. If it can be shown that the bank at A. was forced to pay damages or suffered loss from the non-return of the draft, or through lack of notice of its dishonour, we are of the opinion that the bank at B. would be liable. For a full discussion of these points, see answer to Questions Nos. 58 and 71, also see Section 48 of the Bills of Exchange Act.

Note.—Some questions unavoidably omitted from the present number will be published in July.—Editor.

BOOKS ON LEGAL SUBJECTS AND SUBJECTS RELATED TO BANKING

APPROVED BY THE JOURNAL QUESTIONS COMMITTEE.

MACLAREN'S "BANKS AND BANKING." The Bank Act, with Notes and Discussions; the law relating to Cheques, Warehouse Receipts, Bills of Lading, etc. 1901.

MACLAREN'S "BILLS, NOTES AND CHEQUES." The Bills of Exchange Act, 1890, Canada, and the Amending Act of 1891, with Notes and Illustrations from Canadian, English and American Decisions, and references to Ancient and Modern French Law. By J. J. Maclaren, Q.C., D.C.L., Justice of the Ontario Court of Appeal. Third edition, 1904. Price, $5.50.

HART'S "LAW OF BANKING." Being an able summary of the Law of Banks, by Herbert Hart, LL.D. Second Edition enlarged. 1906. 1228 pages. Cloth $8.00; hf. cf. $9.00

PAGET'S "LAW OF BANKING." Being an able summary of the Law of Cheques and the other peculiarities of the Bankers' position. 1904. Price, $3.75.

RAE'S "COUNTRY BANKER." His Clients, Cares and Work. Fifth edition. Price, $1.00, post paid.

GILBART: "HISTORY, PRINCIPLES AND PRACTICE OF BANKING." Two vols. Price, $3.00.

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JOURNAL

OF THE

CANADIAN BANKERS' ASSOCIATION

VOL. XIV.] JULY, 1907. [Number 4

CONTENTS

PAGE
EDITORIALS 291
COMMERCIAL CRISES 302
FORMATION OF CONTRACT 321
MR. VANDERLIP'S ANALYSIS OF FINANCIAL CONDITIONS 334
BANKS vs. EXPRESS COMPANIES 338
ARE EXPRESS COMPANIES BANKERS? 340
LIQUIDATION OF FAILED NATIONAL BANKS 343
MANUFACTURING STATISTICS 350
RESERVES IN THE UNITED STATES, CANADA, AND ENGLAND 355
BANK OF JAPAN 368
CANADIAN LAW OF BANKS AND BANKING 374
TOO MUCH EXPANSION 376
AS OTHERS SEE US 381
THE WHEAT PLANT LOUSE 382

MONTREAL:
THE GAZETTE PRINTING COMPANY
1907

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VOL. XIV.] [Number 4

JOURNAL

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CANADIAN BANKERS' ASSOCIATION

JULY, 1907

EDITORIAL NOTES

The Monetary Stringency.

The demand for money wherewith to provide for the expansion of business and the extraordinary growth of the country has resulted in a flood of suggestions for what the writers call "better opportunities for outside capital" to be invested in Canadian banks.

There is no cause for clamour and nonsensical talk about the Bank Act restricting the subscriptions to bank shares to our own people. If shareholders in a Canadian chartered bank are unable to "take up" new stock, there is nothing to prevent British or foreign investors from purchasing same.

Offensive Advertising

Chicago bank officials are reported to be much offended by an advertisement inserted in the daily papers by a bad, bold trust and savings bank. It seems that the objectionable matter was published as a two column ad., and it was headed in large type

"Other savings bank depositors LOSE where our customers SAVE."

The Chicago banks object to the advertisement, saying that the taste displayed by the trust company is questionable and that the whole thing conveys a reflection upon other banks, and is calculated to alarm and mislead the uninitiated.

It may comfort our Chicago financial friends to know that they have had Canadian company in their misery.

In Canada also.

An address delivered by Mr. Robert B. Armstrong before the members of the Virginia Bankers' Association contains an allusion to the marvellous prosperity of the United States as being threatened by intemperate thought and action on the part of political and other demagogues. Mr. Armstrong is quoted as saying:

"The wind of corporate attack has been sown, and the country has before it the harvest of the whirlwind. Demagogues both in and out of politics have seized upon railway legislation as an expedient for personal advancement and continued adhesion to public office. Dishonest and crafty peanut politicians have distorted a wise attempt towards railroad rate regulation into a persecution of railroads. They have not hesitated to interfere with economic laws. The cardinal proposition of supply and demand has meant nothing to them, and the railroads and other corporations have had to face an intemperate attack in nearly every state in this country. The people have had to pay the bill. The railroad stocks of this country, with one or two exceptions, are distributed largely among the investing public from the Atlantic to the Pacific. Before this agitation began their securities were worth an amount greatly in excess of the par value. To-day they are worth a thousand million dollars less."

Without knowing much of the causes which brought about the indiscriminate war upon nearly every organization interested in the inter-State commerce of our neighbours, it is easy to understand how great is the interest of bankers in the shrinkage in values of railway and other securities. A tendency to reproach and condemn all corporations is indicated by the resort to legislation to control their operations. Of the bills introduced recently for the purpose of regulating the affairs of railways in the United States Mr. Armstrong says:—

"Many of them were wise; some of them necessary; but had all of them been enacted into laws, they would prove such a handicap that immediate curtailment in service and expenditure would have to be made by every railroad in the land."

Without expressing any sympathy for corporate wrongdoing, and without questioning the motives of the men whose attacks upon corporations have resulted in glutting the market with unsaleable securities, regret may well be expressed if the clamour for legislative interference with railway and industrial corporations should rob capital of its initiative and courage.

Montreal and Overhead Wires.

A committee of able and reputable electrical experts whose report should command confidence and impress people with the importance of the situation have condemned the street wiring of the metropolis of Canada in one pregnant paragraph. Mr. Robert A. Ross, the eminent electrical engineer, supported by his companions of the committee chosen to report upon the matter in question, says: "We are of the opinion that *in no other city does there exist such hazard to property and life through street construction for electrical purposes as in the City of Montreal.*'

The gentlemen referred to give convincing reasons for coming to such a conclusion, and they recommend as a remedy that "*the wires of all companies should be placed underground in the central districts at once, and consecutively thereafter in the less congested districts.*"

All of which is respectfully submitted to the thorough and careful consideration of the members of the Montreal City Council.

The report is illustrated with numerous photographs of the offending wires, and, as an incentive to the city fathers of Montreal, the electrical experts say:

"We have in our possession similar photographs taken in the City of Boston, in 1894, which city as regards narrow streets and high buildings, approaches nearest to Montreal, of any American city. A comparison of such photographs with those submitted with this report shows conditions in Montreal, to be worse than those existing in 1894 in the first mentioned city, and yet that city compelled all companies to place their wires underground in the central portion before 1900, and are extending the underground district from year to year. It is a fact that miles of underground duct have been installed outside the prescribed underground district voluntarily by the companies interested."

Under the circumstances it is not easy to see how action can be longer deferred. It must never be said that the citizens of Boston, whose enterprising forefathers displayed such marked antipathy to tea and taxes, can make Montrealers blush with the thought of their apathy and indifference to the safety of life and property.

The Oldest Bank.

In the April number of the JOURNAL reference was made to the State Bank of Venice as "the *earliest* of modern credit institutions." It was founded in 1171, and has since "cashed in," or passed away.

An esteemed correspondent has favoured the JOURNAL with the following information about the existence of a bank, or banker, at a still earlier period than that in which the Italian monetary concern existed and flourished:—

Montreal, June 27th, 1907.

Editor,
Journal Canadian Bankers' Association,

Dear Sir,

Referring to your extremely interesting editorial article, re the Oldest Bank, in the last issue of the BANKERS' JOURNAL, it would appear that the principles of banking can be traced back in the history of Europe to a far remoter period than is generally known, as the following incident would seem to imply. In Lecky's History of European Morals, Vol. II, page 214, we read, "The Christian Bishop Synesius (VII Cent.) succeeded in converting a Pagan named Evagrius, who for a long time, however, felt doubts about the passage, "He who giveth to the poor lendeth to the Lord." On his conversion, and in obedience to this verse, he gave Synesius three hundred pieces of gold to be distributed among the poor, but he exacted from the Bishop, as a duly qualified agent, a promissory note engaging that he should be repaid when he got to Heaven. Many years later Evagrius being on his death bed commanded his sons when they buried him, to place the note in his hand, and to do so without informing Synesius. His dying injunction was observed, and three days afterwards (were they days of grace or days of purgatory while in doubt as to whether he had been buncoed or not?), he appeared to Synesius in a dream, told him that the debt had been paid, and ordered him to go to the tomb, where he would find a written receipt. Synesius did as he was commanded, and the grave being opened, the promissory note was found in the hand of the dead man with an endorsement declaring that the debt had been paid by St. Peter (but whether with accrued interest to date is not stated).

Perhaps you could suggest in your Answers to Correspondents some method of dealing with this.

P. D. B.

During the heated term or so-called silly season, it is not easy to obtain copy for the JOURNAL. Hence the publication of above letter upon a point of no practical *earthly* interest. But our correspondent's playful humour is appreciated, and his knowledge and research compels our admiration.

WALL STREET TERM ELUCIDATED.—"What does this report mean by saying that 'the shorts were caught in a corner and squeezed'?" "Why it means that they sold what they didn't have to buyers whom they had to get it back from at a higher price in order to deliver it to them."—*Judge.*

Bank Inspection.

The disaster to the Ontario Bank set on foot a lively discussion as to the feasibility and usefulness of a system of inspection of banks by officials of the Government. But few prominent bankers have placed themselves on record as favouring such a plan. Yet, out of the discussion, one point of importance has emerged, and that a point in favour of more thorough inspection than has been customary in some of our banks. The inspection demanded is, however, an inspection, not by government officials for the information of the representatives of the public, but by the officials of the bank itself. As the head office is the focus of the bank and business, the opportunities for developing dangerous weakness are greatest there. The submission of its operations to inspection, and inspection without previous warning, would at least impose an important check on evil practices where their power for evil is greatest. The liability to independent criticism serves as a wholesome restraint, and a recent event has once more illustrated the dangers which may attend the unchecked exercise of powers too autocratic. Whether government inspection be or be not desirable, or even if it be mischievous, *thorough internal inspection* seems capable of effecting no little good.

United States Currency Reform.

The currency system of the United States is a problem of such vital importance to the financial and commercial interests of the country that the delay in dealing with the question is incomprehensible to Canadians. Instead of dealing with the trouble in a broad national spirit, personal interests or political significance seem to prevent the most practical people on earth from finding a solution of the vexed problem.

Our neighbours have had special committees working upon schemes of relief for many years past, but nothing has yet been accomplished.

The latest report on the matter in question is that of Mr. Alfred H. Curtis, one of New York's leading bankers, and a strong man mentally and physically. But even Mr. Curtis does not appear to be hopeful of immediate success in any effort to make his countrymen grapple with this great national question of their currency.

In his report upon the work of the currency committee of the New York State Bankers' Association at the Frontenac convention held last month, Mr. Curtis said:

> "The question of currency reform now rests with the currency commission that was created by the resolution just read. The commission, which undoubtedly was composed of as able financiers as could be brought together, still did not represent the country geographically: for example, Illinois had three members, while New York, the Empire State, had only one member, the entire New England states no member, and the West, from Omaha to San Francisco — more than one-half of the country—had no representative. Among the ten gentlemen chosen, only one was selected from the currency conference. The bill now rests in the hands of the congressional committee, and what its fate will be can only be conjectured, but your delegate believes that if the idea of this association had been carried out, a bill would have been prepared representing the best thoughts of the bankers of the entire United States, and the composition of the currency conference would have been free from the taint of wire-pulling."

Canadian bankers have something to be thankful for.

A Worthy Undertaking.

It is gratifying to learn that there is a movement on foot which has among its objects the investigation and prosecution of fraudulent practices in the commercial life of the Dominion. The organization is working along lines similar to those now successfully operating in Great Britain and the United States. The necessity for some systematic enquiry into causes of assignments has been felt throughout Canadian mercantile circles for a long time, and the number of assignments which have been surrounded by suspicious circumstances in the last few years have been the cause of much unfavourable comment at home and abroad.

The aggregate of liabilities, last year, reached the imposing total of $10,000,000, and from reliable sources it has been estimated that 25 per cent. of the failures were attended with fraud.

One practice which dishonest debtors are in the habit of employing in the fraudulent offer of compromise, is submitting statements which do not include all their assets, and basing their offers of compromise on these statements.

The Association referred to has exposed several of these frauds with satisfactory results to their clients. The movement deserves encouragement, inasmuch as it is endeavouring to combat an evil which affects all classes of the business community in a very substantial financial degree, and because it also besmirches our commercial honour in the eyes of foreign creditors.

Old Fashioned Banking.

Mr. Joseph Chapman, Jr., of Minneapolis, has been writing upon the subject of banking and comparing the practices of to-day with those of fifty years ago. Mr. Joseph Chapman is still refreshingly youthful and his breezy opinions are well worth attention. The following extracts from an address published in *The Chicago Banker* will afford Canadian bankers some idea of Mr. Chapman's style. It is to be hoped that he does not intend to convey a reflection upon the bankers of our own times when he says that fifty years ago "a banker was a gentleman of the old school, educated and conservative." Again, we are not altogether pleased with his presumption in saying "sleepy old Canada has aroused herself and gotten into the game." We can overlook the reference to our age and somnolence, but we do not like the imputation that Canada has "gotten" anything from her neighbours except what it is desirable to acquire. The following is an extract from Mr. Chapman's outspoken utterances to fellow bankers at Spokane:

"Then a banker was a gentleman of the old school, educated and conservative. In opening an account at his bank you were obliged to be introduced by some one acquainted with the bank, and you were carefully 'inspected on the hoof' during your first interview. The customer felt it a privilege and an honour to be doing business at a certain bank, and whenever he contemplated going into a new venture or expanding his business, he took his banker into his confidence and consulted with him before making a move. The bank he did business with was his only source of credit outside of his own assets. The banker was a consulting specialist, as well as a special partner to the extent of the credit extended.

"Trust companies, as we have them to-day, did not exist. The mania for piling up liabilities in the shape of deposits had not spread over the land. Commercial paper brokers were unheard of, except in a few of the New England States, and their operations were on a small scale. Express companies had not entered the field of foreign exchange and the public generally considered their business to be the forwarding of packages and money from one point to another. Enormous banking institutions such as we have to-day did not exist, nor was there any place for them in the economic life of that day. It is only during recent years that the wonderful development of this country has made possible the institutions and methods of to-day.

"'Money-mad' is a common expression—almost a household word—and the effect of this form of insanity is observable not only in the East, but the West has become inoculated, and even sleepy old Canada has aroused herself and gotten into the game. The banking profession has lost most of its old characteristics, and the banker of fifty years ago would feel like a mummy were he suddenly put into the New York banking environment of to-day."

An Interesting Test Case.

Bank managers in the United States are said to be awaiting with interest the outcome of an appeal from a Supreme Court decision making a bank liable for loss resultant from payment of a raised cheque. This in itself is not a singular decision, although the fraud in this instance was made glaringly possible by the drawer leaving a big, blank space before the amount. That space was filled in by the wicked husband of the woman in the case and the cheque cashed for an amount four thousand dollars in excess of the sum that the bank was intended to pay.

The Financier (New York) told the story some months ago in the following way, and stated that the bank concerned intended to appeal to the highest court. The decision when rendered will be interesting to others than the parties most concerned.

"The suit was against one of the leading banks of this city by a woman for the recovery of $4,000 paid by the bank on a check for $900 drawn by her in favour of her husband, which, it is said, he raised to $4,900. The husband has been indicted for forgery and grand larceny. It is said he fled after obtaining the money from the bank, taking with him jewels valued at $6,000, the property of his wife.

"The man in question opened an account in the bank in 1902. For a year the account was active and he was familiar to the tellers. In June, 1903, his wife deposited a draft on a South African bank for $5,000, and an account was opened in her name. On July 17th Timbel presented a check for $4,900 in his favour, signed by his wife. It was paid without question. A few days afterward the wife, greatly excited, appeared in the bank and said her husband had raised the check from $900. The check was in the handwriting of her husband, except the signature, and the bank refused to admit it was liable for the amount. She brought suit, which came up for hearing in the Supreme Court last week. It was shown that the husband had written the body of the check, leaving a large space before the beginning of the words "nine hundred" and before the figures "900." It was alleged he inserted the word "forty" and the figure "4," and, as the insertions were in the same handwriting as the rest of the check, the paying teller did not notice the fraud.

"Counsel for the bank argued that if the drawer or his agent were negligent in signing a check and letting it go out of his hand in such a manner that blank spaces could be filled so as not to arouse suspicion the drawer was liable for any loss that might be caused by the cashing of the check. The woman's lawyer held it was not negligence on her part to leave such blank spaces on the check. The judge took the same view and did not let the case go to the jury, but directed a verdict for the plaintiff."

The sympathy of some people may be with the excited wife, but ours goes out unreservedly to the bank having business relations with such a woman.

That Parliament should protect the people goes without saying. But it will be regrettable, indeed, if hasty and imprudent legislation should frighten timid investors and prevent the flow of money into a country which has seemingly outgrown its capital and is now sorely taxing its transportation facilities.

Ill-Advised Tampering with Vested Rights.

The warning words of Mr. A. R. Doble in his review of a notable address by Mr. Vanderlip are very timely, and it is only by deep and diligent meditation that our law-makers will acquire knowledge and judgment equal to the task of wrestling with socialistic problems such as those now bothering our neighbours.

J. T. P. K.

MR. ROCKEFELLER.

There is little question but the chief profit in Mr. Rockefeller's visit to Chicago went—as usual—to his own account. He gave the public a chance to see an amiable, courteous gentleman, gracefully growing old and as little distrustful of the courts as any. He posed for the cameras, interviewed the reporters, was polite to the judge, and probably told all that he might reasonably be expected to know of S. O. affairs.

His apologetic air might lead one to think that, had he known during the eight or ten years he has remained away from 26 Broadway, that Judge Landis some day would want to get an insight into the company's affairs, he would have kept himself fully informed. Fortunately, a competent person with a head for detail—Mr. Pratt, the secretary, in fact—was at hand to supply the information which Mr. Rockefeller wanted so much to give and could not except in a general way. Thus was that good man saved the pain of seeing the judge disappointed.

A few more such public appearances will completely disarm his critics. Mr. Rockefeller made friends and attracted lasting sympathy in submitting so gracefully to a sweating process when there are half a hundred others who could better have answered the questions. There was none of the air of the "too big to go into court" about the sunny old gentleman from the golf links which he loves so well.—*Chicago Banker.*

COMMERCIAL CRISES.

II.

A. W. Flux.

WE now proceed to consider the more immediate causes of some of the great crises of the century, a few of their leading incidents and other interesting matters connected with them.

As I stated in the last number of the Journal, the year 1824 was marked by the launching of a great variety of enterprises, prominent among which were South American mining developments; the list, however, included a number of Insurance Companies, Navigation Companies, Land and Investment Companies, etc. The floating of a number of loans to European States during the years 1817-23, most of which turned out satisfactorily, led to a considerable further investment of capital in foreign loans in 1825, the South American states especially taking advantage of the ready disposition of British investors to subscribe to such loans, when the announcement was made that England was about to formally recognize these states as independent. Throughout 1824 and well into 1825 this speculative craze lasted.

The continued and very marked fall of prices which had proceeded from 1818 till nearly or quite the close of 1824 makes the produce markets stand apart from the general excitement of speculation. Anticipated shortness in the supply of some of the leading articles, however, led to advances in price towards the close of the year, and the ease in the money market stimulated the spirit of speculation based on such anticipation. Cotton led the way. The importance of the cotton industry to the country is shown by the fact that the declared values of exports of goods from this country included about £85 worth of cotton yarns and goods to every £100 worth of other goods at that time. *Bowed Georgia* was quoted at 7½d. to 9d. in the months between July and November, 1824. In the period following to June, 1825, it was quoted at 16d. to 18½d. Silk, wool, flax and other goods of which the consumption was outrunning the supply began also to rise and speculation rapidly carried their prices far beyond what the real scarcity warranted. The machinery and manufactures and stores which were to represent the investments in South America and the loans to the Governments there began to be shipped, causing a stimulation of demand for manufactured goods. Under the influence of the rise of prices, there were tempted into the market a number of outsiders with merely speculative purposes and having no expert knowledge of the markets in which they dealt. The rising wave affected classes of goods not affected by scarcity, real or rumoured, partly through such operators as these. The highest point was reached by most articles before the end of April, 1825, when, owing to causes which I indicated in the last number of the JOURNAL, a break came, I have mentioned the ease of the money market as one of the causes helping on the speculators. This ease is reflected in the rising value of the 3 per cents., which, from 73½ at the beginning of April, 1823, rose steadily to 97¼ at the end of April, 1824, after which a fall, at first slow, took place as money became more sought after for the current speculations. The rise in the premium of exchequer bills continued after consols had begun to droop. The cheapness of money had enabled a conversion of the 5 per cents. to be made at the end of 1822, a four per cent. stock replacing them, and a conversion of the old fours to 3½ per cent. took place early in 1824. These operations stimulated many to seek new investments in place of submitting to the reduced yield of their old holdings, and hence, in part, the eager welcome given to the projects before referred to. The end of the inflation is thus described by Tooke:—

"As regarded the majority of the loans and schemes here "referred to, it was soon discovered that, while the calls for "payments were immediate and pressing, the prospects of re"turns was become more remote and uncertain; doubts, too, "began soon to arise as to there being sufficient security for "*any* income. Accordingly, after the greatest elevation in "January and February, 1825, there was a pause in the first "instance, then a slight decline, and, after a few weeks, namely, "in the May and June following, a rapid decline."

So far as the loans and projects in South America were concerned, but little gain resulted from any of them. A majority of the other schemes, floated with them, shared a like fate. The losses fell in part on the non-trading classes, but the banking and commercial world did not escape having to bear a great part of the burden. A source of trouble often before and since felt soon made itself manifest. Banks which were capable of meeting all their obligations if they were but given time possessed an insufficient supply of liquid assets. Others, of course, had gone further and exceeded their power of meeting their engagements even if time were available. But the inability to meet *current* demands was all that was necessary to produce breakdown. Not only country banks, but London houses also had been imprudent, and when Pole & Co. stopped payment early in December, 1825, a shock was given to credit apart from the embarrassments of connections of the firm. A run on some of the London banks resulted, and the panic became general. In 1825 and 1826, as was stated afterwards in the House of Commons, there were 770 country bankers. Of these 63 stopped payment. Taking London and country together some 70 banks suspended in the course of that December.

Of course country bankers' notes fell under suspicion and were returned on their issuers in large quantities. The void in the circulation had to be filled from the Bank of England. This institution had already been drained of a good deal of gold for export, but, fortunately, its reserves did not fall so low as to call for suspension of cash payments, so comparatively recently renewed. More has, perhaps, been made of the story of the discovery of an old box of £1 notes, some of which were issued at this time, than its importance warrants. The usual difficulties to which I alluded in the preceding article, when goods could find no buyer and none was willing to advance any sum on the security of goods, the value of which was eminently uncertain, were experienced. Hence, with forced sales, disastrous falls in prices. To illustrate again by cotton. Bowed Georgia had been at 16d. to 18½d. in the first half of 1825. A year later it was 6⅛d. to 7⅛d. The fall was to a lower level than that which had obtained before the speculative rise. The first rush of distrust had fallen on the bankers. Later on, as their obligations matured and could not be met or renewed, merchants swelled the lists of failures. Long-dated bills had been a cause of trouble to the banks. The interval they provided before the merchants were called on to meet engagements accounts for the fact of mercantile failures not actually occurring simultaneously with the banking collapse. The small traders fell, but it was towards the end of January, 1826, before important mercantile establishments were added to the pile of ruined houses. Manufacturers felt the effect of reduced demand. Some were ruined, some reduced their business to the lowest limit possible. Employment became scarce. Food did not fall in price, while so far as they were holders of notes of failed banks, the labouring classes had their sufferings from want of employment aggravated by this direct loss.

Applications to the Government for help in various ways were unavailing, beyond this, that, though refusing direct help, the ministers pressed the directors of the Bank of England to adopt a relief measure. Local boards were set up in some of the chief manufacturing centres, including Manchester and Liverpool, Birmingham and Sheffield, and Glasgow. for the purpose of making advances on goods in 1826. The limit of the fund applicable to this purpose was £3,000,000, but only £400,000 was actually advanced, of which over £115,000 in Manchester alone. The confidence that undue credit had been withdrawn and that markets were left to reach their natural level had made the relief of less importance than might have been anticipated.

It may be added that of the 63 country bankers who failed in 1825 and 1826, 23 paid 20s. on the £ and resumed business within the next two years, and 31 others were, when the House of Commons received the information quoted in June, 1828, making arrangements to follow suit.

In the United States a panic had occurred in the later months of 1825, due to similar causes (with local variations) to those which have been referred to as the origin of the disturbance here. On its details I shall not dwell.

Only a few words more on the crisis of 1825. The pressure was extreme, but short-lived. Mr. Huskisson remarked that "we were within a few hours of a state of barter." The week ending Saturday, December 17, 1825, appears to have been the turning-point. The lowest point of the Bank's treasure was a week later, when it possessed £425,000 in coin and £601,000 in bullion, or £1,027,000 in all. The week had brought in supplies enough to enable the actual needs of the public to be met. It had increased its note issues by over 1½ millions in that week, following on an increase of all but 6 millions in the preceding week. Between the beginning and end of December, the note-issue increased by nearly one-half. The trust in these notes saved the bank from the worst consequences which might conceivedly have followed on its increasing its issues in the latter half of the preceding year, one of the contributing causes to the drain of bullion by which its treasure fell from 13½ millions in January, 1824, to 3 millions in November, 1825, thus leaving it all too ill prepared for the strain of the December failures.

The rise in the value of money which followed the crisis is illustrated by the fall in the price of consols from 94½ in January of 1825, to 73⅞, the lowest point touched, in February, 1826. By the end of 1826 most of the disturbance in business caused by the panic and violent fluctuations in prices had entirely subsided. The Bank had reduced its discount rate to the normal level of 4 per cent., and the liquidation of the crisis was complete.

It must be observed that the statutory prohibition of interest beyond 5 per cent. prevented some from getting accommodation who would have been glad to give 8 or 10 per cent. for it, and, by forced sales of goods or stock, really lost more than such a payment involves.

In 1826 Parliament prohibited the circulation of notes of less value than £5 in England and permitted the establishment of Joint Stock Banks other than the Bank of England, provided they had no office in or within 65 miles of London. Such banks were unlimited. In 1833 the word Bank was detached from any necessary association with note-issue, for Joint Stock Banks of Deposit and Discount were allowed to be established in London provided they did not issue notes. These joint stock banks are alleged to have provided additional facilities for the operations which led to the next crisis in 1836. The crisis itself was not a very severe one, and affected special sections of trade in a particular degree. It is peculiar, however, from the fact that it consists of two parts, a renewal of trouble ensuing in 1839.

A series of good harvests preceding 1835 caused a fall in the prices of provisions, but the restoration of confidence led to a gradual extension of the demand for manufactures, resulting in advances in manufactured goods and in the raw materials from which they were made. The metals, particularly, lead, copper, tin, and, most important of all, iron, improved in price. The signs of sound and prosperous trade were everywhere observable. The money market was easy, credit was expanding. Makers of cotton, silk and woollen goods, and also of iron found their order-books overfilled, and were unable to take fresh orders unless with considerable extension of time beyond the usual limits. The success of the railway from Manchester to Liverpool had been the forerunner of numerous railway projects, not only in this country, but in America. Employment was abundant in carrying out as well as preparing material for these projects.

In 1836 a speculative spirit got hold of the country. In our own district it appears to have been more strongly manifested than in London. In contrast to 1825, the speculations were directed rather to domestic than to foreign enterprise. The undue extension of credit then noticed, however, was not absent in 1836. Though mining or other foreign enterprise was not the basis of much of the speculation, foreign loans recur as a cause leading to a drain of resources. South American, Spanish and Portuguese bonds found a ready market in London, though a break in this speculation took place as early as May, 1835, long before the arrival of the crisis. The growth of joint stock banks is notable in that 72 in England and Wales and 10 in Ireland were established during 1835 and 1836. A competition for the supply of banking facilities resulted. No little blame has been laid on the Bank of England for neglecting to maintain its funds by raising the rate of discount in good time. Not till July, 1836, did they advance the rate from 4 per cent., and then only to 4½. In August a further step to 5 per cent. was taken. But by that time this measure was insufficient. The refusal to discount any bills bearing an endorsement by joint stock banks of issue was one further means taken to husband the reduced resources. A large part of the bills drawn in America on even first-rate establishments in this country was also rejected. Such a measure aggravated the discredit which began to manifest itself. After September some of the worst managed of the joint stock banks felt the effect of discredit. In November the Agricultural and Commercial Bank of Ireland suspended payment, and a Manchester concern, the Northern and Central Bank, with a capital paid-up of about £700,000 and some co-branches had to seek help, which the Bank of England decided on December 1st to give. At the beginning of 1837 the overtrading in the American trade led to the difficulties of houses involved in it becoming notorious, and three of the leading establishments asked for and received assistance from the Bank of England. Fortunately, gold began to flow into the country from abroad, and the lowest point touched by the bullion in the Bank was a little under 4 millions in February, 1837. All through the first half of 1837, however, commercial discredit prevailed, and, as matters were also critical in America, the American trade houses already helped had again to apply in May for further relief. The security they could offer was judged inadequate and they were refused. On June 1st, when the refusal was announced, these three houses suspended payment. Others followed shortly in the same course, though they were of less importance. The week following June 1st, 1837, may be considered that of culmination of the panic. The removal of the heavy weight of doubtful paper and credit permitted a sounder state of affairs to be established. Early in February, 1838, the Bank once more possessed 10 millions of treasure, while its discounts fell from nearly 20 to a little under 7½ millions. It should be added that the East Indian, including China, trade shared in some degree with the American in the distress of this time.

Trouble developed in America early in 1837, and a commercial crash occurred in April of that year. One hundred and twenty-eight failures occurred in New York between April 1st and 11th, and the price of cotton fell nearly 50 per cent. The banks of New York suspended specie payments on May 10th and those in the country which had not already fallen followed the example of New York within a few days. Specie payments were resumed in New York just one year after suspension, and elsewhere generally on July 1, 1838. An important incident in the crisis was the speculation in cotton of President Biddle of the United States Bank of Pennsylvania. He undertook to corner the cotton product of the world and in connection with his operations drew, in the course of 1837, bills to the amount of 3 millions sterling on England. The help of the Bank of the United States was given Biddle to endeavour to prevent the collapse of markets which must follow his inability to meet his engagements. But the enterprise was too vast and discredit could not be averted. These American operations, as already noted, contributed not a little to the collapse of credit in England.

The liquidation of this crisis advanced regularly enough in 1838, but, unfortunately, the harvest of that year was very bad, and a need for large importations of corn followed on a series of years when little or none had been needed from abroad. Since 1816 no such deficient crop had been experienced. A drain of gold to pay for purchases abroad which current exports of goods could not meet took place steadily from the beginning of 1839. The Bank, able now to charge more than 5 per cent. on three months' bills, raised the rate to 5⅞ on June 20th, and then on August 1st to 6 per cent. In France and in Belgium distress had been, during the year or two proceeding, greater than in England, and in August, 1838, the Belgian Bank suspended payments, one of the causes leading to demands for gold upon London. There were other causes into which we have not time to enter in detail. The Bank had kept its rate as low as 3½ per cent. till the end of November, 1838, and thus once more failed, as two years before, to adopt appropriate measures in time to prepare against the strain, in fact, this same rate of 3½ was repeated at the end of February, 1839. Not till May 6th did a 5 per cent. rate displace this low figure, and the rapid advances subsequently came too late to prevent the reduction of the bullion to below 2½ millions in August. The rise of the rate in June was combined with a restriction to advances on bills of exchange only. The immediate result was to depress the price of bonds and Exchequer bills. Some attempt was made to relieve part of the dead-weight annuity, but on terms which did not attract the public, the bank's minimum being above any of the tenders received. Towards the end of July an arrangement was made with a syndicate of Paris bankers for accommodation to the extent of £2,000,000. Some similar arrangement was also made at Hamburg. It is curious that this credit was negotiated through a Baring, when one remembers that but little over half a century later help from Paris once more relieved the situation, this time caused by troubles of the house of Baring. The facility for drawing on Paris to meet obligations was in operation for nine months till April, 1840.

The recrudescence of crisis in 1839 appears capable of being associated with the check to the liquidation in America which help in 1837 rendered possible. The difficulties were glossed over. The surgeon's knife had been put aside, but in vain. A renewed outbreak exerted its influence in the countries which were in commercial relations with America, though in them the difficulties of 1836-7 had been well nigh healed. The speculations in corn and great extensions of mills between 1836 and 1839 were auxiliary causes of trouble.

One result of this crisis was a further restriction of the English usury laws, the power to lend above 5 per cent. being in 1837 extended to bills having twelve months currency, and in 1839 to all personal contracts. Another and a far greater result was the separation of the issue and banking departments of the Bank of England on the renewal of its Charter in 1844 and the restriction of country note-issues.

We pass now to consider the crisis of 1847.

During the interval of quiet trade after the breakdown in the late thirties, the bank-rate fell to a lower figure than ever before noted, namely 2½ per cent. This was on September 7th, 1844, when the new Act came in. The institution of a rate of considerable variability in place of one of a nearly constant level was one of the results of the changes in the mode of arranging its business entailed on the Bank by Peel's Act. The market rate of discount had fallen to 1¾ per cent. in 1843 and the reduction of bank-rate to 2½ brought with it some competition between the bank and brokers for discount business at times.

We have seen that speculations in railways had been one of the features leading up to the crisis of 1836-7. A renewed interest in the same development was felt from about 1844, which powers of compulsory acquisition of the necessary land stimulated. Growing year by year, in 1846 a perfect mania for railway speculation occurred. 1,263 schemes were launched in that one year, which, if realized, would have involved an outlay of no less than £560,000,000. Naturally all sorts of railway securities became gambling counters. Parliament actually authorized in 1846 schemes involving the raising of 130 millions of capital, or within one-fifth of as much as had been authorized in the preceding twenty years. As a particular example of the inflated prices reached in the mania of speculation may be quoted the Bolton, Wigan and Liverpool £40 shares with £4 paid which, worth £4 10s. in January, sold in September at £42 15s. The actual outlay on labour and materials for railways in the years 1844-46 and the first half of 1847 was 66 millions sterling, or nine times what it had been in the three years preceding. Over 20 millions, in fact, were so spent in the first half of 1847 alone. In the four years, 1844-47, the amount actually raised on railway loans was £104,400,000, against £65,600,000 previous to 1844. America and the continent were also promising fields for railway enterprise. So large and rapid a conversion of floating into fixed capital could not fail to produce striking results in the market for loanable capital.

But other causes leading to distress were also at work. The potato crops of 1845 and 1846, as is well known, were a complete failure in Ireland and threatening famine forced the hands of legislators who, in a manner which I need not relate, repealed the Corn Laws in 1846, suspending also the Navigation Acts. In 1846 4¾ million quarters of grain and meal were imported, or something like three times as much as commonly. In 1847 the figure rose to nearly 12 million quarters. Russia and America provided most of the supply. A deficient supply of cotton added to the embarrassments of the time. From 4⅛d. at the end of 1845 the staple rose to 7¼d. at the end of 1846.

To meet calls on railway shares and to finance the gigantic grain operations involved in the increased imports, money was needed. The bank reserve suffered depletion in the latter part of 1846, the discount rate being maintained at the low level of 3 per cent. till the middle of January. The payments for foreign grain led to a drain of specie, reducing the reserve to 9½ millions before 1846 closed, and 4 millions further before the end of March, succeeded by a drain of 2½ millions in the first three weeks of April, which left the Bank with only 3 millions to meet its engagements. Yet a discount rate of 5 per cent. was not reached till the 8th of April. It shortly appeared that grain speculations had been overdone. A large import in the second quarter of the year reduced the price from 110s. to 60s. the quarter, and even below that figure. Failures in the corn trade resulted and the influence of discredit was felt in other departments of business. We are told that nearly all the firms engaged in trade with Mauritius suspended payment shortly after this, and a general discredit resulted affecting particularly the India trade. The reserve had risen to 6½ millions at the end of June, and was as high as 5 millions at the beginning of September. From that point the reduction necessary to meet the needs of commerce was rapid. On the 1st October the Bank announced a rate of 5½ per cent. on bills due not later than the 12th, and refused altogether advances on public securities. Representations which had been made to the Government by merchants and others led at last to interference. On October 25th the Government sent a letter to the Bank requesting the Directors to afford such accommodation as was needed to the mercantile classes, at a discount rate not less than 8 per cent., and undertaking, if it became necessary for that purpose, to issue notes in excess of what the 1844 Act permitted with the store of bullion actually in hand, a bill of indemnity should be at the earliest opportunity proposed to Parliament. Any extra profit from excess issues was to go to the public. The knowledge which the Directors had that the letter was to be sent led them to discount somewhat more freely than before, at high rates, and on Saturday, October 23rd, the reserve was just under 2 millions. A week later it was barely over £1,600,000, of which hardly more than half was in London, the rest with its branches. Meanwhile, the Bank had borrowed on consols to strengthen its reserve, a method by which several of the directors declared afterwards they believed they might have met the difficulty without the Government letter. Within a fortnight after the date of that letter the fears that the Act might be broken were removed.

It is certain that the knowledge that the Bank was not restrained by law from issuing as many notes as might be necessary relieved many from the necessity of making instant application for what might, without that knowledge, have been a matter of urgency to secure at once. The scramble for money ceased to have that intensity which it had before shown. With 8½ millions of bullion in the Bank no one feared inconvertibility of notes, and notes promised were therefore a sufficient means of payment. Before November ended the reserve had once more reached 5½ millions, and it reached 8½ at the turn of the year.

To turn now to the ruin that had been caused by the failure of the corn speculation and consequent discredit. In addition to the corn speculators themselves, an eminent discount broker with a large country connection was drawn into the vortex of their ruin. Distrust extended into the country as a result, while other London firms followed. The refusal to make advances on public securities which the Bank published on October 1st, led to a stock exchange panic. On October 18th the Royal Bank of Liverpool stopped payment, the Liverpool Banking Company, the North and South Wales Banking Company, some private country banks, and the Union Bank of Newcastle followed in rapid succession. "To these disasters succeeded "alarm, and an almost total prostration of credit. The Lon-"don bankers and discount brokers refused to grant the usual "accommodation to their customers, and necessarily obliged "every one requiring assistance to resort to the Bank of Eng-"land. Money was hoarded to a considerable extent, so much "so that notwithstanding the notes and coin issued to the "public in October exceeded by 465 millions the amount with "the public in August, still the general complaint was of a "scarcity of money. Credit was so entirely destroyed that "houses trading to distant countries carrying on their business "through the means of credit, by a renewal of their acceptances "as they became due, were no longer able to meet their en-"gagements, and were forced to stop payment." So stated the Governor of the Bank to the Committee of Secrecy of 1848. He further referred to thirty-three, comparatively speaking, large houses which failed in London, the total liabilities of the thirty-three being £8,129,000. Most of these, he said, could not have been pulled through with any assistance possible to give them. Others bore witness that the firms which went under were, for the most part, firms which had lost their capital or increased their trade beyond the power of their capital to cope with it. Worn-out houses, one called them. Of the above thirty-three, seven only were expected to pay in full, and their liabilities were:—one, a bill-broker, £1,700,000; the other six, £1,200,000.

The restoration of confidence that sound houses would not be refused assistance soon replaced panic by a sense of security.

In the interval between 1847 and 1857 two events of considerable importance to our study occurred. One of them was the Crimean War, disturbing the ordinary current of events, and breaking into the smooth sequence of the various stages of the cycle of credit. The second was the great gold discoveries in California and Australia. The preceding three crises have marked temporary pauses in a generally downward course of prices, while the growth of trade, as measured by the values of exports, was comparatively steady. From soon after the middle of the century prices began to rise, and 1857 comes as a point of elevation of prices above a fairly steady level, attained about 1853 or 1854, some 20 to 25 per cent. above the points touched in 1849, 1850 and 1851. The growth of trade is marked by rapid increases, the breakdown after the crisis marking a mere slight check in the upward progress.

A very large increase in deposits with joint stock banks is another feature of the interval. The activity of trade relatively to the supply of loanable capital is evidenced by the discount rate pretty fairly. This was at as low as 2½ and even 2 in 1852, but, though as low as 3½ for a time in 1855, kept at a pretty high average from 1854 onwards. The war involved large payments of specie abroad and foreign loans were also raised in London for war purposes.

In September and October, 1857, news was received from America of a great depreciation of railway securities and the failure of an important firm, the Ohio Life and Trust Company, of Cincinnati and New York, with reported liabilities of $7,000,000, on August 27th. After a run on September 26th, banks in Philadelphia and Baltimore suspended and serious disturbances in exchange business between the two countries resulted from the high level of discount on the American side. In New York, on October 13th, 62 out of 63 banks suspended payment in specie, and in Boston as well as in the cities before named a similar course was followed.

A panic on the New York Stock Exchange had followed the failure of the Ohio Company, stocks fell, and money was hoarded and loaned only at extravagant rates. Deposits began to disappear from the banks and the suspensions resulted. In the early part of October, the Illinois Central Railroad, the New York & Erie, and the Michigan Central failed. Prices of commodities tumbled with the price of stocks and farmers felt the effect in the depreciation of wheat, flour and pork, as well as in the fall of real estate. The New York banks contracted their discounts from $122,000,000 to $97,200,000 between August 8th and October 17th. The Judges of the Supreme Court met and agreed not to enjoin banks which had suspended specie payments in defiance of the law, unless in cases where fraud or real insolvency appeared.

In England those most closely connected with American trade first felt the influence of these calamities. On October 27th the Borough Bank of Liverpool closed its doors. On November 7th the great house of Dennistoun & Co. followed suit. The Western Bank of Scotland suspended on the 9th November, and on the 11th the City of Glasgow Bank also suspended for a time. The Northumberland and Durham District Bank failed on the 26th, and on the 17th the Wolverhampton Bank suspended payment temporarily.

The bill brokers of London, with insufficient reserves, were alarmed. They relied on recovering from bills falling due enough to meet daily engagements, and on obtaining help from the Bank of England on the security of bills held by them, in case of pressure. Bankers needed to attend more to their own reserves and had to restrict the usual accommodation to the brokers. This drove them to the Bank of England. One great house, the principal house in London, actually got £700,000 in one day at the worst period of the whole panic, October 28th.

Further bad news from America in the third week of October led to further failures in England. The reserve was

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[*] Note that National Banks grew from 715 in 1847 to 1,416 in 1857. Loans and discount: 310 millions to 684 millions. Notes from 105½ millions to 214¾ millions, falling to 155 in 1858. Government bond purchases afforded New York banks the means of increasing specie and loans, leading up to strained state.

only just over 4 millions, and the discount rate was raised to 8 per cent. A drain to Scotland and to Ireland was joined to a drain to private silver for remittance to India. The reserve fell to below 3 millions on November 5th, and the discount rate rose to 9 per cent. on that day. The French rate was high and so too was that at Hamburg. In London 10 per cent. was reached on November 9th, an application for £400,000 was made by a leading discount house next day; the next day but one, besides the Scotch banks already mentioned, the great bill-brokers, Sanderson & Co., with 5 millions sterling of liabilities, failed. On the 12th the reserve fell to £581,000. Discounts and advances were increasing with great rapidity, no less than £2,373,000 having been so obtained from the Bank on the one day, the 12th. Then the Government repeated the step of 1847, and authorized a breech of the Bank Act if necessary with the rate at 10 per cent., in order to meet demands for advances on approved security. Alarm did not at once subside. The loans and advances rose by some 3½ millions more till the 21st, when they were £21,616,000. This was about double that of October 27th, the date of the first bank failure. Half of the loans were to bill brokers and on securities on which ordinarily the Bank would not have advanced.

Such extensive accommodation to mercantile houses was only possible by exceeding the bounds laid down by the law. £2,000,000 of securities were transferred to the Issue Department in exchange for £2,000,000 of notes. The largest amount of these actually issued was £928,000 on November 20th, and by December 1st the issues were again within the limits laid down by Peel's Act. The bullion in the Bank never fell to 6 millions, so that convertibility of notes was secured by a considerable margin. It may be added that, in addition to other measures, the Bank sold, during November, no less than £2,750,000 worth (at the selling prices depressed as they were) of Government securities.

The firms which failed in 1857 were said to be of a weaker character on the whole, than those which went under in 1847. The committee of inquiry reported that it was their own misconduct which had broken them. A mischievous system of extensive fictitious credits, carried on by means of accommodation bills and open credits, had been developed. The country joint stock banks discounted such bills, sent them to bill brokers in London for rediscount, and there they were taken, not on their own merits, but on the standing of the bank sending them up.

The whole of northern Europe (with the exception of the Low Countries) shared in the alarm and distress which has been notified as occurring in England and America, arising from the latter country and involving first those whose excessive commitments in trade with the States prepared the way for ruin, and then sweeping away a great system of unsound trading of which this particular section was but one example. As in other cases, a great fall in the prices of leading produce took place, but over that we have not time to linger. We must pass on to the next great business crash, that of 1866, perhaps the greatest of modern times.

With the return of peace in the United States, and the outbreak of war in Europe, the ordinary currents of business were violently disturbed. The development of joint stock companies under the various acts which admitted the principle of limited liability provided opportunity for a great expansion of commercial operations. Many a private partnership was formed into a united company, and many companies converted from unlimited to limited. Among these, finance companies were prominent. The disturbances of 1864, in France and on the Continent especially, had caused the liquidation of a good many business houses, but had left their finance companies practically untouched. Prominent among the objects of which they facilitated the execution was the construction of railways. They advanced funds, or rather endorsed bills of railway companies, thus providing a means of purchasing construction material without waiting for subscriptions, to shares or stock, or the taking up of debentures. The bills were, of course, to be renewed from time to time. But a long time must elapse, after its construction has begun, before a railway can begin to earn profits, and advances need to be secured meanwhile. Untoward events might delay the completion of the line, and its securities were really of value only as drafts on the distant and rather uncertain future. The free supply of capital by the method of accepting bills with such a security behind them resembles rather closely the mode of procedure which was pointed out as a cause of trouble in 1857.

The house of Overend, Gurney & Co. attracted very great attention by the magnitude of its operations, and their boldness, since recognized as wild imprudence. For more than half a century it had held a commanding position in the City of London as a bill broking and great finance house. The death of Samuel Gurney, in 1856, and the retirement of David Barclay Chapman in 1857 deprived the firm of the management which had made it so great. Enormous advances to navigation companies and to American railways absorbed its resources. When, in 1865, it was converted into a limited company, it had already overstepped the limit, as it turned out, by about 3 millions sterling. Its reputation, however, assured an eager reception to its prospectus, and the £5,000,000 of capital was readily subscribed. Its continued existence appeared later to have involved only a growth in its net obligations. The craze for floating companies was marvellous. In a few years no less than 300 were floated, no one of which had a nominal capital of less than a million sterling. Many were abandoned at a very early stage, some three-score in all. A further 87 were speedily wound up, and in a short time but 122 of the 300 were left, and these represented but one-third of the £504,000,000 of capital involved in the 300 proposals.

The external commerce of Great Britain was, it must be remembered, still advancing by rapid strides. The growth of the supplies of cotton from India involved the shipment of large amounts of silver thither in payment. The speculations in cotton which took place, as well as in other produce, contributed to the excitement.

At last came the day when the excessive accommodation afforded to all kinds of enterprises could be no longer continued. " On Thursday, May 10th, 1866, the state of commerce " and finance appeared to be still at the height of prosperity. " On Friday, May 11, they were at the lowest depths of discredit " and declension." So writes Leone Levi. The *Times* reported ," About midday, yesterday, the tumult became a rout. The doors of the most respectable banking houses were beseiged, more, perhaps, by a mob actuated by the strong sympathy which makes and keeps a mob together, than by creditors of the bank, and throngs, heaving and tumbling about Lombard Street, made that narrow thoroughfare impassable." Overend, Gurney & Co.

had failed on the 10th, with liabilities of £18,727,915. The Bank started that Black Friday with 5¾ millions in reserve and ended with hardly more than half that in the evening, the Bank having lent over £4,000,000 in the course of the day. The joint stock banks were greatly concerned, and pressure on the Government led to the issue once more of a letter authorizing a breach of the Bank Act. The bank rate was already at 9 per cent., it was to be raised to 10 per cent. for any advances involving such a breach. It was not, in fact, necessary to use the power given to break the law. The lowest point reached by the reserve without that measure was £850,000 on the last day of May. In five days, beginning the 10th, the Bank made advances and discounts of £12,225,000. The coin and bullion did not fall below £11,860,000. The failure of Overend, Gurney & Co. (final close of affairs November 16th, 1893) was followed by a rapid succession of failures and suspensions of various kinds. The Bank of London, the Agra and Masterman Bank, the European Bank, the English Joint Stock Bank, the Consolidated Bank (temporarily), Hellet & Co., Price & Co., the Joint Stock Discount Co., etc., etc. The American "Atlantic & Great Western Railway" may be mentioned as suspending payment also and affecting the embarrassments of English finance. Some English railway companies, the Chatham & Dover, the Great Western & the North British were also involved in the trouble.

The clearance of weak houses was thorough and the mode of business which had so adversely affected the joint stock banks, both in 1857 and 1866 was soon after reduced to a very low limit. Such banks now do more in investing some of their funds in London than in borrowing from the London market as was then their practice, by the dangerous method indicated. Such business is recognized as being undesirable for banks whatever it may be for other houses.

The outbreak of the panic of 1866 was far more sudden than in preceding cases. Its decay, however, the subsequent restoration of credit was slower than on former occasions. For fourteen weeks the 10 per cent. rate was maintained, as against 6½ weeks in 1857 and 4 weeks in 1847 (of 8 per cent.). Abroad, the Government letter, the failure of such firms as Overend & Gurney, and the maintenance of the high rate, was misunderstood and a vague rumour spread that the Bank of England was in danger. The Earl of Clarendon even took the step of sending a circular to the British Embassies and legations all over Europe to allay the distrust.

We have left for the next article to consider the period which has elapsed since 1866, to endeavour to establish the relations of the events of 1873 with its features of crisis, with the breakdown of 1878 when the City of Glasgow Bank went by the board, and the West of England Bank followed in its train. To consider the relation of the slight recovery of trade in 1883 to these and to pass briefly in review the crisis of 1890. Some observations must also be directed to those not inconsiderable disturbances of business which fall between the great crashes we have thus far considered, with a view to seeing whether the experience since 1866 fits in with the general cyclical order or reveals new features. All this may enable us to satisfy ourselves as to the approximate place in the cycle occupied by the present year, and afford anticipations of the course of events likely to be experienced in the next few years—not precise anticipations perhaps, but some general ideas, not lacking in interest and possibly in utility.

BRANCH BANKS IN THE UNITED KINGDOM.

The number of branch bank offices in the United Kingdom was increased during the year 1906 by 103, bringing the total number of banking offices to 7,507. This includes no less than 95 offices of Foreign and Colonial banks doing business in Great Britain. Three English banks have more than 400 branches each, Lloyds' Bank heading the list with 517 offices, the other two being the London City and Midland, with 485, and Barclays,' with 429. In England and Wales there is one to every 5,900 of the population; in Scotland the proportion is one to every 3,800, and in Ireland one to every 5,700.

FORMATION OF CONTRACT.

Chapter III.

We now come to certain matters, which may affect either the formation or operation of contract, which may be classified as follows, namely: Illegality, Mistake, Misrepresentation, Fraud, and Duress. The principles involved are not hard to understand, and we may almost say that they are such as would inevitably be arrived at in any system of jurisprudence which had for its basis common sense.

(1) *Illegality.*—No part of a contract must be tainted with illegality; neither the consideration nor any of the terms; and in this is included the principle that the offer itself must be capable of creating legal relations. As an illustration of this latter point we may take the case of Week v. Tibold, where the defendant had told the plaintiff that he would give the sum of £100 to any man who should marry his daughter with his consent. Week married Tibold's daughter and sued for the amount; but it was held that a man could not "be bound by general words spoken to excite suitors." If, however, Tibold had actually promised Week in writing that he would give him £100 if he married his daughter, the decision would probably have been in Week's favour; because the consideration for Tibold's promise would have been Week's marriage, and marriage is regarded as a good "consideration" in the eye of the law.

Again, a contract may be illegal because it is forbidden by statute or the common law. Thus, wagers being illegal, a bet made on, say, a football match, cannot be recovered in a court of law.

Again, poaching is illegal. Suppose, therefore, a poacher to make a contract with a gun-maker, by which the gun-maker agrees to let the other rent a gun for poaching purposes; the consideration being half the profits of the sale of the stolen game. Suppose first that the poacher has had the gun for a month ,and refuses to pay the stipulated rental. The gun-maker cannot sue him. Or, suppose that half an hour after making the contract the gun-maker regrets having made it, and when the poacher comes for the gun, refuses to let him have it. The poacher cannot sue him for breach of contract, because of the illegality of the object.

Similarly, agreements in *general* restraint of trade are not binding because they are contrary to public policy and the common law. But agreements in partial restraint of trade may be binding according to the circumstances of the case. Thus, in the leading case of Mallan v. May, May, an apprentice to a firm of surgeon dentists had covenanted that after learning the business with them for four years he would not carry on that business "in London, or any of the towns or places in England or Scotland, where the plaintiffs might have been practising before the expiration of the term of the said service." May afterwards broke this covenant by practising in London and other places, and he was sued by the plaintiffs. It was held that the restriction as to London was valid, because it might be reasonably inferred that by practising there he would clash with the interests of his old employers; and it was secondly held that the other stipulation as to not practising in towns where the plaintiffs might have been practising was unreasonable, and *therefore illegal and void; and that the stipulation as to not practising in London was not affected by the illegality of the other part.*

The last words must be carefully noted as generally applicable to this class of contracts. In the words of Willes, J., in another case, "Where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void, but where you can sever them, *whether the illegality be created by statute or common law,* you may reject the bad part and retain the good."

The great leading case on the subject of restraint of trade is Nordenfelt v. Maxim-Nordenfelt Company. Nordenfelt had sold his business as a gun-maker and inventor for £287,500, covenanting that for twenty-five years he would cease to carry on the manufacture of guns, gun-carriages, powder, or ammunition, or other business whereby to compete with the company. He was, however, entitled under the covenant to deal in explosives (excepting gunpowder), in torpedoes or submarine boats, and in metal castings or forgings. He did not adhere to the terms of the covenant, maintaining that it was illegal and in "restraint of trade." The House of Lords held that the covenant though unrestricted as to space was not, having regard to the nature of the business and the limited number of the customers wider than was necessary for the protection of the company, nor injurious to the public interest; that it was therefore valid and might be enforced by injunction.

In one of the elaborate judgments delivered the following passage occurred: "The true view at the present time, I think, is this: The public have an interest in every person's carrying on his trade freely: so has the individual. All interference with individual liberty of action in trading, and all restraint of trade of themselves, if there is nothing more, are contrary to public policy, and, therefore, void. That is the general rule. But there are exceptions: restraint of trade and interference with individual liberty of action may be justfiied by the special circumstances of a particular case. It is a sufficient justification, and, indeed, it is the only justification, if the restriction is reasonable—reasonable, that is, in reference to the interests of the parties concerned, and reasonable to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public. That is, I think, the fair result of all the authorities."

Mistake.

The following definition is given by Sir W. Anson: "The parties may not have meant the same thing, or one or both may, while meaning the same thing, have formed untrue conclusions as to the subject-matter of the agreement. This is mistake."

This is illustrated, so far as the parties are concerned, by the case of Boulton v. Jones. Jones had been in the habit of dealing with one Brocklehurst, against whom he had a set-off. It was therefore his interest to order goods from Brocklehurst, as by so doing he diminished Brocklehurst's debt to himself. Brocklehurst, without Jones' knowledge, had transferred his business to Boulton, and when Jones sent an order for goods to Brocklehurst, Boulton sent the goods without informing him that the business had changed hands. Jones, on learning this, refused to pay for the goods. It was held that he was justified in refusing, *because there had been a mistake as to the* *parties,* Jones thinking he was dealing with Brocklehurst, when he was really dealing with Boulton; and Boulton being aware of this mistake ought to have rectified it.

We will now take a case of mistake on the subject matter.

In Raffles v. Wickelhaus a contract had been made by which the defendant agreed to buy some cotton which was "to arrive ex Peerless" from Bombay. There were two ships of this name, both sailing from Bombay. The defendant had referred to one, and the plaintiff to the other. This was a mistake as to the subject-matter and it was held there was no contract.

As a further illustration of this subject we may take the following passage from Sir W. Anson's Law of Contract, which admirably explains a difficult subject in a brief form:

"The law will not allow a man to make or accept a promise, which he knows that the other party understands in a different sense from that in which he understands it himself.

We can best illustrate these propositions by an imaginary sale.

A sells X a piece of china.

(*a*) X thinks it is Dresden china, A thinks it is not. Each takes his chance. X may get a better thing that A intended to sell, or a worse thing than he intended to buy; in neither case is the validity of the contract affected.

(*b*) X thinks it is Dresden china. A knows that X thinks so, and knows that it is not.

The contract holds. A must do nothing to deceive X, but he is not bound to prevent X from deceiving himself as to the *quality* of the article sold.

(*x*) X thinks it is Dresden china and thinks that A intends to sell it as *Dresden* china; and A knows it is not Dresden china, but does not know that X thinks that he intends to sell it as *Dresden* china. The contract says nothing of Dresden, but is for a sale of china in general terms.

The contract holds. The misapprehension by X *of the extent of A's promise,* unknown to A, has no effect. It is not A's fault that X omitted to introduce terms which he wished to form part of the contract.

(*d*) X thinks it is Dresden china, and thinks that A intends to sell it as Dresden china. A knows that X thinks *he is promising Dresden china,* but does not mean to promise more than china in general terms.

The contract is void. X's error was not one of judgment, as in (*b*), but regarded the intention of A, and A, knowing that his intention was mistaken, allowed the mistake to continue."

We may take it as a rule then "that when one man knows that another understands his promise in a different sense from that in which he made it the transaction will not be allowed to stand."

A good illustration is afforded by the equity case of Webster v .Cecil, which was a suit for specific performance.

Webster offered to buy Cecil's land for £2,000. Cecil refused, but afterwards wrote offering to sell for £1,200 in mistake for £2,100. Webster knowing there had been a mistake, snapped at the offer by return of post. The Court of Chancery (or Equity) held that he could not claim specific performance, though he might possibly claim damages in a court of law.

Misrepresentation.

Misrepresentation differs from fraud. Fraud is an actionable wrong. Misrepresentation is not. At the same time, in the words of Jessel, M.R., "it has always been considered that misrepresentations *which strike at the root of a contract* are sufficient to avoid the contract." In such a case the misrepresentation is regarded as a 'condition' or 'warranty,' and is sufficient to discharge the injured party from his obligation." Thus, in the leading case, Behn v. Burness, Behn had agreed that his ship, "then in the port of Amsterdam," should sail to Newport and load coals for Hong Kong. The ship was *not then* at Amsterdam, and Burness refused to load his cargo on that ground. The misrepresentation was regarded as a condition, and the breach of it to entitle Burness to decline to load.

The Courts of Equity were, before the Judicature Acts, even more severe on misrepresentations than the Courts of Common Law. [Courts of Common Law here means Courts of Law, as distinguished from the Court of Chancery. Since the Judicature Act there has been a fusion of Law and Equity, and in any court where the rules of law and equity clash, the rules of equity are now to prevail.] Thus, in the case of Lamarre v. Dixon, Lamarre a French wine merchant, had agreed to lease

Dixon's cellars, having been assured by Dixon that they were dry. He accepted the assurance, and the condition was not mentioned in the actual lease; but when he found they were damp, he repudiated the agreement, and the House of Lords on appeal upheld his action, not because the dryness was a term in the contract (for it was not mentioned in the lease), but because it was untrue in fact.

Fraud.

Fraud, as we have already said, is an actionable wrong, on which an action for deceit can be brought; but in the words of Lord Herschell: "First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made, (1) knowingly, or (2) without belief in its truth, or (3) recklessly, *careless whether it be true or false*. Although I have treated the second and third as distinct cases, I think that the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states."

The representation, says Sir William, "need not be made to the injured party; but it must be made with the intention that he should act upon it." Thus, in Langridge v. Levy, Langridge, Sen., had bought a gun from Levy which was to be used by himself and his sons. Levy said the gun was made by Nock, and "a good, safe and secure gun." These statements were all false, and when Langridge Jun., was injured by the gun exploding, and sued Levy, the Court of Exchequer held that as "there was fraud, and damage, the result of that fraud, *not from an act remote or consequential, but one contemplated by the defendant at the time as one of its results,* the party guilty of the fraud is responsible to the party injured."

Duress and Undue influence.

Duress may be regarded as only a special form of Undue Influence. It consists in actual or threatened violence of any kind, and a contract entered into by any party under the influence of duress is voidable. Suppose, for instance, that Smith wishes to purchase a house from Jones for £300. Jones refuses to sell at all. Smith enters Jones' house under some pretext, holds a pistol to his head, and makes Jones write him an offer to sell at £300. Jones has an acceptance in his pocket(dated that day) which he then signs and hands to Smith. Smith is not bound by the contract, though in all other respects except that it was obtained by an undue influence of duress, it satisfies legal requirements. But suppose that instead of threatening to shoot Smith, Jones threatens to shoot his (Smith's) infant son, and by this threat obtains Smith's written signature. The contract is equally voidable, for it is equally duress whether it be practiced on the contracting party himself, or on his children, wife, or parents. But not only the special form of duress, but any kind of undue influence may make a contract voidable. Thus, where any relations, parental or confidential, exist between the parties, and a promise or gift is made by the party influenced to the other, undue influence will be presumed unless it can be shewn that that party has been "placed in such a position as will enable him to form an entirely free and unfettered judgment independent altogether of any sort of control."

Thus, if a doctor, *by virtue of his position as family physician,* should use his influence over a widow to the extent of inducing her to make him a gift of, say £100, the gift would be voidable on the ground of undue influence. But there must be undue influence of an active character to upset the gift or promise. Thus, in Mitchell v. Homfray, a jury found that a patient who had made a present to her medical man had adhered to the gift after the confidential relationship (presumed to exist between a patient and doctor) had ceased, and this decision was upheld by the Court of Appeal.

Capacity of Parties.

Not every person is capable of making a contract. This capability of entering into the contractual relations is technically known by the term "Capacity of Parties." Thus, it is contrary alike to the principles of justice and common sense that a child of tender years, a lunatic or a drunken person should be compelled to perform contracts which their particular disability prevented them from entering on equal terms. And, as a matter of fact, an infant (that is to say, a person under the age of 21 years) has special protection afforded by the law. Thus, under the Common Law [as contrasted with Statute Law] a contract wholly executory was not valid until an infant came of age, and then ratified it. This, Sir W. Anson terms a case of a promise supported by a *past* consideration; but perhaps we might more accurately use the word "dormant." [The consideration had been existing all the time in a *dormant* state; it was brought into activity again by the infant on attaining the age of legal discretion ratifying the contract. The contract itself might be considered to be in a state of suspended animation.]

This was the general principle of the Common Law on the subject till the Infants' Relief Act, 1874, by which an infant is guarded even more strictly than before from the possibilities of advantage being taken of his inexperience. It runs as follows: 1. "All contracts, whether by specialty" [contracts by specialty means contracts under seal] "or by simple contract henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (*other than contracts for necessaries*) and all accounts stated with infants, shall be absolutely void; provided always that this enactment shall not invalidate any contract into which an infant may by any existing or future statute, or by the rules of common law or equity enter, except such as now by law are voidable. 2. No action shall be brought whereby to charge any person *upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification* made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age."

Now it will be noticed that the act is most stringent in its protection; but that there are two exceptions, the *first* of which refers to "necessaries," and the second to contracts of service and apprenticeship.

The *general* principle of the Act is well illustrated by the case of Smith v. King. King, while an infant, had incurred a liability for £547. His creditors after he came of age sued him, and he compromised the matter by giving them two bills of exchange for £50. One of these bills was endorsed to a man named Smith (which means that Smith having given value to the original holders of the bill could sue the person who drew the bill). Now, the drawer of the bill was, in this instance, King; and Smith accordingly sued King. The Queen's Bench Division held that Smith could not recover. Charles, J., in delivering judgment, said: "We have in the present case, first, a promise by King during his minority to pay a sum of money; secondly, a promise by him after full age to pay a portion of that sum. It is said that the forbearance of the then plaintiffs to carry on their action afforded a new consideration and a good consideration for King's promise to pay the bills of exchange. In my opinion, however, that case is amply provided for by Sec. 2 of the Act. I think that there was here a new consideration for the defendant's promise; but the section expressly says that no action shall be brought on such a promise even where there is a new consideration for it."

We must now consider the two exceptions. What then are "necessaries' in the eye of the law? and we may answer in the words of Baron Parke, "From the earliest time down to the present the word necessaries is not confined in its strict sense to such articles as were necessary to the support of life, but extended to articles fit to maintain the particular person in the state, station and degree in life in which he is." Articles of mere luxury cannot be necessaries suitable to the condition of any infant. But articles of utility, although luxurious and expensive, may be. Moreover, not only the question of *quality,* but also of *quantity* must be considered. Thus, in Barnes v. Toye, Lopes, J., said: "A contract by an infant for the supply of goods to him cannot be enforced unless the articles be necessaries, the policy of the law being directed to the protection of infants. In point of fact, a *tradesman dealing on credit with an infant does so at his peril,* and must lose his money (that is, if the infant does not voluntarily pay him) unless he can prove that the goods supplied were necessaries for the infant according to his station in life. That being the law we come to the question, What are necessaries? *To determine this we must take into account what the infant had at the time of giving the order.* For example: a watch may be *primâ facie in some cases* a necessary, but if it turned out that the infant was already supplied with a watch or watches, the one ordered could not be a necessary."

What is a necessary thus depends on the circumstances. Thus, in a recent case, The Clyde Cycle Co. v. Hargreaves, Lord Russell, C.J., upheld the decision of a county court judge that under the circumstances a racing bicycle was a necessary for an infant apprentice earning 21s. a week, and living with his parents, "*remembering that the use of bicycles by persons in the defendant's position was common in his neighbourhood.'* The facts of the case were as follows: The defendant was a young man of 19, apprenticed to a scientific instrument maker in Leicester. He had bought a racing bicycle of the plaintiffs at £12 10s. He paid £2 on the occasion of the purchase, kept the bicycle for some months during which he used it and won prizes in racing, and then returned it to the Clyde Cycle Co., who agreed to allow him £8 for it. The action was brought to recover the balance of £2 10s.; but though the defendant pleaded infancy, the plaintiffs were held entitled to recover.

But it must be noticed that (as Sir F. Pollock says), "the policy of the statute is to protect infants from running into debt, not to disable them from making purchases for ready money." Thus, an infant who has paid for goods and received and used them cannot recover the money back. The scope and limitation of the statute in this respect is well illustrated in the case of Valentini v. Canali. The plaintiff being an infant contracted with the defendant, Canali, to become tenant of his house, and to pay £102 for the furniture. Valentini occupied the premises for several months, and paid £68 on account, giving a promissory note for the balance. He now sued Canali, on the ground that the contract made with himself, an infant, was void; and that he was entitled to recover the money paid. The court held that though the contract should be set aside, and the promissory note cancelled, yet that the money paid could not be recovered. Said Lord Coleridge: "No doubt the words of section 1 of the Infants' Relief Act are strong and general, but a reasonable construction ought to be put on them. The construction which has been contended for on the part of the plaintiff would involve a violation of natural justice. *When an infant has paid for something and has consumed* or used it, it is contrary to natural justice that he should recover back the money which he has paid. Here the infant plaintiff who claimed to recover back the money which he had paid to the defendant had had the use of a quantity of furniture for some months. He could not give back the benefit or replace the defendant in the position in which he was before the contract...... The defendant, therefore, could not be called upon to repay the money paid to him by the plaintiff."

The second exception mentioned in the first paragraph of section 1, namely, "contracts into which an infant may enter by any existing or future statute, or by rules of common law or equity," refers to contracts of service or apprenticeship made by an infant.

Thus, "It has always been clearly held that contracts of apprenticeship and within regard to labour are not contracts to an action on which the plea of infancy is a complete defence. The question has always been whether the contract, when carefully examined in all its terms, is for the benefit of the infant. If so, the court will not allow the infant to repudiate it."

An infant is liable for a "tort" [that is a civil wrong]; but action cannot be brought against an infant on a wrong actually arising out of a contract. Thus, where an infant had hired and over-ridden a mare, it was held that he could not be sued in tort for negligence. Riding in this case was part of the contract. But in another case, where an infant hired a horse for riding and *was expressly forbidden to use the horse for jumping purposes*; he was held liable for lending the horse to a friend who caused its death by making it *jump*; the reason being that "what was done by the defendant was not an abuse of the contract, but was the doing of an act which he was expressly forbidden by the owner to do with the animal."

Married Women.

Before the Married Women's Property Act came into force on the 1st of January, 1883, the contract formed by a married woman was, generally speaking, void. The effect of the Act and of the subsequent act of 1893 may be broadly stated in the words of Sir W. Anson: "Marriage no longer involves any proprietary disability. All the property which a woman owns when she marries remains hers, and all property which she may subsequently acquire becomes hers, unless it is placed in the hands of trustees with a restraint* upon anticipation. The area of separate estate is immensely extended, and therewith the contractual capacity of the woman. Full effect is given to this extension by the provision in the Act that future as well as existing separate estate is rendered liable to satisfy the contract. And the rights and liabilities thus increased are rendered more easy of enforcement by the provision which enables the married woman to sue and be sued alone."

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*"Restraint upon anticipation" is the legal term used when money is placed in the hands of trustees to prevent a married woman "anticipating" her income.

But the liability to which a married woman can thus subject herself possesses some peculiar features.

It is not a personal liability. It cannot come into existence unless there is separate estate, and it does not extend beyond the separate estate. Thus, where a joint judgment is given against husband and wife, it is to be given against the husband personally, and against the wife as to her separate property.

Again, a married woman cannot be made a bankrupt or committed to prison under section 5 of the Debtors' Act 1869, for non-payment of a sum for which judgment has been given against her, under subsection 2 of the Act of 1882. The Debtors' Act relates to persons from whom a debt is due, and damages or costs recovered against a married woman do not constitute a debt due from her, but "shall be payable out of her separate estate, and not otherwise." Beyond this a judgment against a married woman "is precisely the same as a judgment against an unmarried woman." The judgment is against *her*; "the fact that execution is limited to her separate property does not make it any the less a judgment against her."

We must now briefly consider some other instances of limited contractual capacity.

Corporations being artificial creations of the law, must contract by means of an agent. A corporation "cannot act in its own person, for it has no person." Hence the rule, which we have already noticed, that except in trivial matters of everyday occurrence it must contract under seal.

An *alien* may make contracts like a natural born British subject, but he cannot acquire property in a British ship.

A *felon*, that is to say, one who has been convicted of treason or felony, cannot, during the period of his conviction, make a valid contract.

A *lunatic's* contract is voidable by the lunatic if he can show that he was a lunatic at the time of making it, *and also* "that the person with whom he contracted knew him to be so insane as not to be capable of understanding what he was about."

A similar rule applies to *drunken* persons. A contract made by a drunken man with a person who knows him to be drunk is voidable by the drunkard. But if afterwards, when sober, he affirms it, he is then bound to it. Thus, a man in a state of intoxication bought land at auction. He affirmed the contract when sober, and when he afterwards tried to repudiate it he was held to his contract. Said Baron Martin, "I think that a drunken man, when he recovers his senses, might insist on the fulfilment of his bargain, and therefore that he can ratify it so as to bind himself to a performance of it."

R. E. MACNAGHTEN.

(*To be continued.*)

CONDITIONS IN SOUTH AFRICA.—The complete stoppage of the inflow of fresh capital into, not only the Transvaal, but all the South African Colonies, has been a leading cause of the continuance of the depression. During the year 1904 the capital importations into South Africa amounted to £20,000,000; in 1905 not less than £15,000,000 was raised in London on South African account; while in 1906 the amount was practically *nil.* The effect of this sharp curtailment of the spending power of the community must have been very great. It has to be remembered, too, that we have to remit to England, probably, at least £12,000,000 every year to pay dividends and interest on the capital invested in South Africa. While looking forward, therefore, to a revival of confidence that will stimulate the inflow of capital for investment, it is well to bear in mind that the burden of debt owing by South Africa is already tolerably heavy, and that to provide even the annual charge for the interest on it is already a fairly severe tax upon the productive powers of the country.—*South African Journal.*

MR. VANDERLIP'S ANALYSIS OF FINANCIAL. CONDITIONS.

A. R. DOBLE.

F. A. VANDERLIP, of the National City Bank of New York, is a master in things financial who is always sure of a hearing, but in these days of chastened sentiment, when the business public actually hankers after preaching, his recent address before the Virginia Bankers' Association was immediately added to the Economic Evangel.

It is, however, easier to analyze a condition than to foretell a crisis. Not that the actual business of prophecy is a difficult one, for the thoughtful man knows that cause and effect are inseparably united, and that the prophet merely combines an alert mind to discern cause with a logical mind to deduce effect. We have our own true prophets in Canada, and more than a year ago our financially weatherwise began to advocate preparations for squalls; but it is only because a merciful Providence has sent gusts of wind before the whirlwind that few vessels will be found under full sail if the storm breaks.

Mr. Vanderlip, in his character as analyst, epitomizes the conditions in these words:

> "We are still in the midst of evidences of abounding prosperity, "although we have passed through one of the most drastic declines "ever witnessed in stock market values. The stock market decline "has been of itself of a most unusual character, particularly in so "far that in spite of a fall in prices that cut a third off market "values, no failure of importance resulted from the disturbance. "The absence of failures has perhaps led people distant from the "centre of the disturbance to minimize its importance and to argue "that in any event its effects were not likely to be extended into "lines of business not directly related to the security markets. This "has given a sense of independence and assurance in many sections "of the country, unusual after so severe a decline in quotations."

Price movements in the Stock Exchanges are not necessarily representative of or effective upon the commercial business of the country. We have seen bull markets in bad times and bear markets in good times. Sentiment, imagination, imitation are often more potent in their influence on the Exchange than are actual conditions.

The money market, on the other hand, is the very heart of the business community. With money flowing freely through the accustomed channels, responding to every demand of each member, the financial body moves blithely along, and alas, sometimes commits excesses in its full-blooded enthusiasm, sapping its strength and depleting the reserve which might else be of service in sluggish days to come. A plethora of the circulating medium almost inevitably leads to expansion and inflation, and, as a consequence of the misuse of capital, to exhaustion. The causes which have been operating in this direction Mr. Vanderlip summarizes as follows:

> "When they (the railroad managers) started to accomplish "these improvements the money markets of the world had for some "time been gorged with idle funds, and it had been possible to "float securities on a favourable interest basis. But within the "period that we are contemplating the Boer War destroyed one "and one-half billions of the world's capital; the Russo-Japanese "War dissipated almost an equal amount, and the San Francisco "and other disasters made further appalling inroads upon the world's "assets. War and calamities on one hand, and industrial activities "on the other, therefore, united in putting perhaps an unprecedented "strain upon the money markets of the world.
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> "Labour and material alike rose to unprecedented figures. It "seemed as if every purchasable thing advanced in price but the "commodity of railway transportation. Railway rates showed little "tendency to change; if there was any, it was in the direction of "lower rates. Operating expenses increased enormously. The wage "fund rose to by far the highest point in the history of railway "operation, and accompanying this advance in wages came an absolute deterioration in the efficiency of labour. It is, I think, a "perfectly safe statement to say that with the advanced wages of "the last three or four years, labour has, on an average, shown a "decreased efficiency of 20 per cent. Every large employer of "labour will corroborate this tendency. It can readily be seen that "in applying this percentage of deterioration to the total labour "field, the matter becomes a factor of appalling importance."

To the labour problem thus touched upon, the speaker did justice only in the choice of his adjectives, describing it as a factor of "appalling importance." Here again we touch a vital part of the body politic, essential to its well-being, potent for good or evil, but with its influence becoming increasingly exerted in the wrong direction, unmindful that when the reaction comes it will be of "appalling importance" to labour itself. Labour forgets that it is *of* the body, not merely *in* the body, and the monstrous way in which it is being encouraged to regard the employer as the natural enemy of the employee makes one fearful of results to itself as well as to capital.

Speaking of the recent railway legislation in the United States, Mr. Vanderlip remarks:—

> "The historian, will see, I believe, that in the main, what is bad "in our present railway system has been a natural and inevitable "result of environment and legislation. He will see, too, that the "attempts to regulate, although sometimes crude, sometimes vindic-"tive and predatory, sometimes harsh and unfair, will have been, "on the whole, working toward a situation in which right principles, "more clearly understood and correct commercial ethics, more gen-"erally perceived, came into more dominant control. He will see "that both legislation and the public attitude were after all about "all that might have been reasonably expected considering what the "public had encountered.
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> "At the present moment, however, we are in the very midst of "the dilemma. The holders of railway securities have been pro-"foundly shocked at the possibilities which the future unfolds to "them. If legislatures can, without enquiry or opportunity for pro-"test, reduce, to any point that a politician feels is personally desir-"able to him, the rate a railway may charge for its service, then "the term security is no longer to be applied to the obligation of a "railway company. The overwhelming possibilities that might lie "in unfair legislation were beginning to be borne into the minds of "investors, and the timidity which that understanding brought, was "added to the world-wide money stringency which has already been "mentioned.

Since the above words were uttered, the American railroad magnates have signified their intention of accepting the situation, notwithstanding Governor Hughes' notable action which might have stemmed the tide. What has happened over the border will doubtless lead to attempts at like legislative action in our own country, and it would be well before the next session if our people would calmly consider not only the effect such legislation might have in making it difficult to attract the capital which our development will increasingly demand, but also its possible effect on our own everyday life.

We are dependent upon the transportation companies not only for personal transit, but for nearly everything we eat, use and wear. Already their facilities are taxed to the utmost, and a further extension of them means large capital expenditures, upon which a fair interest return *must* be offered. It cannot be said that those who testified to their faith in the future of the country and risked their money in the early days of its railway development have received more than fair compensation, while the indirect benefits to every dweller in the land are immeasurable. A reduction of the standard in railway charges would only benefit the occasional traveller, the regular user already gets wholesale rates in commutation, mileage, and other forms of reduced fares; and while a reduced standard rate means little to the average citizen, it means a great deal in the aggregate to the railway companies. It is something akin to the ridiculously exploited quarterly interest payments by the banks, the gain to the individual depositor being about one cent per hundred dollars per annum, and the aggregate loss to the banks something very considerable. This is all by way of addition to Mr. Vanderlip's telling point that the price of transportation has declined in spite of its improved quality, while the price of nearly every other purchasable commodity has greatly increased.

Through the remainder of the address Mr. Vanderlip assumes the rôle of prophet, but whether he is correct in hinging his country's prosperity upon the action of its legislators in regard to railway and other matters is open to question. The curtailment of credit, production and business which he foresees, is, in Canada, at least, upon us, and is the natural result of over-booming and over-confidence. The reaction is healthy, and if it should prove severe and last for a considerable period, the net result will be salutary. Professional agitators in and out of Parliament will have their day, but they and those whom they represent must in the end feel most severely whatever repressive measures they may be able to enact. Should the golden stream run dry, the parched lowlands will be the last to receive irrigation when its channels are reopened. The warning with which Mr. Vanderlip concludes is, in this connection, worthy of being taken to heart in this Dominion:

> "If we are to have legislation based upon political advantage, if we are to adopt socialistic theories which will amount to "the confiscation of property rights, if we are to have reprisal for "past wrongs, no matter how real, if action is the one thing wanted "first, and the consideration of the intelligence and fairness of such "action is to come afterwards, then I believe it is possible that the "whole business structure may be facing a danger, the proportion "of which will be measured by the same vast figures as have been "the totals that have marked the extent of our prosperity."

BANKS *VERSUS* EXPRESS COMPANIES.

AT the recent meeting of the Texas Bankers' Association, a question now receiving attention among the bankers of this country was made the subject of an excellent address by Mr. W. F. Woods, Cashier of the Woods National Bank, San Antonio. What course the banks should pursue in dealing with their vigorous rivals is a vexed question.

It seems to be generally agreed among bankers on both sides of the Ashburton treaty line that express companies are gradually usurping the rights of banks by selling money orders and bills of exchange. Yet no one appears to be ready with a plan to mitigate the evil, and, at least in Canada, all the banking facilities of the country are, even if grumblingly given, virtually at the disposal of the express companies, their orders being freely cashed by any and every bank until the public is beginning to regard them as legal currency.

The means adopted by the Texan banker were effective, and might well be adopted in Canada. But is it necessary to accommodate bank customers to the extent of cashing express money orders at a loss? United action on the part of Canadian banks would compel the express companies to keep sufficient funds at every point to meet obligations, or to make some arrangement with banks paying express companies' orders for a division of the commission charged for same.

The result of the work undertaken by the American Bankers' Association will be watched with much interest by Canadian bankers.

The following extract from the address of Mr. Woods contains the story of how a Texan banker acted towards an express company when his patience became exhausted:—

"As many of you know, the American Bankers' Association at the last convention, which was held in St. Louis, adopted a resolution covering this matter and appointed a committee of representative bankers who were to carefully investigate the different phases of this subject and carry the matter before the Interstate Commerce Commission. A recent report made by Mr. Fred. I. Kent, exchange manager of the First National of Chicago, and chairman of the committee appointed at St. Louis, indicates that the preliminary work of the committee was designed to secure an expression from all bankers, showing their experience in the handling of bank money orders. As a result of this correspondence, the committee secured abundant evidence upon which to base the injustice of the competition of the express companies, and they now intend to carry the case forward with energy and despatch.

My attention has recently been called to an incident which shows some of the unjust and oppressive features of the express company system, as well as the steps which one long suffering banker took to remedy an intolerable condition. Makanda, Illinois, is a town of about six hundred population, located in the heart of the fruit and vegetable district of southern Illinois; consequently, it is a shipping point of some importance, as many as sixteen car loads of peaches alone being forwarded in a single day, with other fruits and vegetables in like proportion. It appears that fully three-fourths of the produce shipped from this point was paid for with express money orders, and that the Bank of Makanda, of which Mr. E. F. Miller is cashier, had to cash them. The agent of the express company at this point was not allowed to retain over fifty dollars cash on hand, which was, of course, totally inadequate to handle the volume of the business. Mr. Miller cashed these orders at a loss to himself, in order to accommodate his patrons, until finally patience ceased to be a virtue. After presenting orders time and again and making numerous requests to the officials of the company to have funds placed there to protect their business, he determined, after securing legal advice, to protest the papers for nonpayment, and did protest some two hundred and eight orders, amounting to $2,500, with protest fees in the neighbourhood of $600. The result was that the express companies not only immediately cashed these orders, but paid the protest fees and arranged, after much bluster, to keep sufficient funds at that point to meet their obligations in the future. This incident is related in order to show some of the burdens to which bankers are subjected, and it fully illustrates the point that the expresss companies, after securing the money in advance for their orders, expect the banks to take care of them afterwards with bank funds and without cost to the express companies. This is not right. It is unjust, and bankers should take concerted action looking to its abolition."

ARE EXPRESS COMPANIES BANKERS?

P. L. Downs.

NOW, why all this tumult and confusion about the express companies? Bring it home to yourselves. Have they not contributed their burden of the responsibility of doing business to-day in the great work of the development of this country's resources? Have they not contributed their share to your progress and your prosperity? When the great waterways subjects have from time to time come up for discussion, and the people of your section have had to put their hands in their pockets and pull out hundreds of thousands of dollars or hundreds of thousands of acres of land and contribute them to the subscription list and for other demands that have been made upon them to develop your natural resources, have not the express companies alike put their hands in their pockets and done the same thing? When the great intercoastal canal proposition has been brought to your attention and your help has been invoked and your co-operation has been asked for, have the express companies not come forward and proffered their co-operation and some of their money? When the great rice industry of this state, the great oil industry of this state, and other allied industries, have required your capital and your efforts and your power to help your people and contribute to your prosperity, have the express companies not come forward and given their aid and assistance and co-operation and money? When the great banking houses of Hutchins, Sealy & Co., of Galveston, and the City National of Dallas, and the National American Exchange Bank of Dallas, and the Fort Worth National, and the First National and Commercial National of Houston, and all other banking institutions of this great state, have put their money into the magnificent monuments that are a pride to the people of Texas, those splendid banking houses that have demonstrated their love for Texas and their efforts in the development of our broad expanse, have these great express companies not come forward and done likewise by putting hundreds and thousands of their dollars, earned from the people of Texas, into magnificent buildings, into magnificently constructed office buildings, to show their interest in you and their efforts in the upbuilding of this great commonwealth? If they have done any of these things, if they have assisted you and assisted the masses of the people of Texas in developing our natural resources and in contributing their measure to the furtherance of the prosperity of our people, your humble servant has not been advised of it.

Now, what about the franchise and chartered rights of these express companies? Under what are they operating? What are their chartered rights and privileges? See what an authority says on the subject. Are they bankers? Are they express companies? Here is what is said: "They are acting to-day as express companies, bankers, brokers, bond dealers, sellers of oysters, fruits, cigars, fish, ice cream, fancy birds, goldfish, pigeons, dogs, cats, Belgian hares, wines, popcorn, nuts, poultry, eggs, cattle, hogs," etc.

Has the state of Texas ever given to an express company the privilege of doing a banking business in this state? Has the national government ever given any express company the right or privilege of doing a money order banking business under this national government? I have never heard or seen such a proposition. They are simply parasites upon the bankers and banking business of Texas. They are absolutely sucking the very lifeblood of the banking business in Texas.

Now, as I said, I am not going into any particulars with you. Here is one quotation I would like to read to you so as to give you an idea of what is being done to remedy the evil: "The fight against the express companies is being carried on solely because it is the firm conviction of the members of the American Bankers' Association that their rights are being seriously transgressed, and that the banking business done by the express companies is wrong in principle. That they compete with bankers is true, and if it were merely fair and square competition bankers would have no cause and no right to complain; but no men, nor set of men, can be expected to stand by and compete for business that properly belongs to them, when they are forced against their will to furnish the capital for their competitors free gratis to do business." These warnings the express companies have not heeded, but instead have endeavoured to force their way further and further into the bankers' legitimate field. Therefore, if their huge system is declared illegal and stopped, they can offer no complaint, because they were warned before its present large development.

We need, therefore, feel no hesitancy about attacking that portion of the express company's business that is not justified, even though it may work temporary hardship upon them, the same as upon other immense interests that have been called to account for various reasons during the last few years. The mutterings and discontent of bankers caused by this illegitimate competition of the express companies have finally culminated in a resolution passed at the convention of the American Bankers' Association held in St. Louis last October, requiring the appointment of a committee to carry this matter before the Interstate Commerce Commission.

Why don't you members of this association show and express your determination to uphold and protect your interest and your business? I tell you, my fellow bankers, that you need not blame the express companies so long as you allow yourselves to be imposed upon. So long as these money orders are presented at your counter and you continue to take them and cash them and pay out your good money, can you expect them to do otherwise? No. You must certainly take such united action and such a determined stand that it will impress express companies at once and for all time that you are determined to look after and protect to the best ability and to the greatest extent of your power, your own personal, private and corporate interests.

POOR CANADA.—In discussing the very old United States currency question, Mr. Andrew J. Frame of Waukesha, Wisconsin, is reported as saying:

"Canada has thirty-four large central banks with, say, 1,200 branches. They issue currency secured by a 5 per cent. deposit and by a first lien on assets. No bank with less than $500,000 subscribed capital can issue currency. Each bank, with its several branches, pays out only its own notes—34 different kinds, not over 6,000—and sends all others home for redemption. Canada's total banking power is less than that of little Massachusetts. She is asleep compared to our activity, and it would seem to require a very vivid imagination to find any parallel conditions there."

Andrew should go to Texas for information about Canada.

LIQUIDATION OF FAILED NATIONAL BANKS.

IN the report of the United States Comptroller of the Currency are some valuable statistics of results of liquidation of failed national banks, which are specially interesting just now to Canadians because of the failure and liquidation of two banks in their own country since the beginning of 1905. Happily for Canada these events have been rare of late—the two failures referred to, those of the Bank of Yarmouth and the Ontario Bank being all that have happened since the commencement of the present century.

There is a record, in the Comptroller's report, of the affairs of failed banks clear back to 1865. The following particulars, extracted from the report, show the results for the forty years to 31st October, 1905:

Number of national banks failed		376
Capital stock at failure		$59,047,420
Aggregate liabilities less capital stock		170,236,026
Total assets at suspension:		
Estimated good	$82,945,436	
Estimated doubtful	72,782,596	
Estimated worthless	48,843,395	
		204,571,427
Assets received since suspension		31,888,120
Total assets		236,459,547
Collected from assets		114,622,566
Offsets		17,945,308
Assessment on shareholders		35,753,390
Collected from assessment on shareholders		17,362,345
Loss on assets compounded or sold		92,152,092
Total realized		149,930,219
Loans paid and other disbursements	$25,053,803	
Offsets	17,945,308	
Legal expenses	3,656,342	
Receiver's salary and other expenses	6,454,434	
Paid to shareholders, cash	2,094,705	
Balance in hand	35,584	
Dividends to creditors	94,690,043	
		149,930,219
Amount of claims proved		127,236,915
Per cent paid to creditors		80.88
Loss suffered by creditors		32,546,872

Though these figures cover a period of forty years it should be observed that quite a considerable proportion of the failures occurred in the seven years, 1890 to 1897. No less than 196 banks failed in that short time, their assets aggregating over $123,000,000, or more than half the total for the whole forty years. They were disastrous failures too, for the losses they inflicted on depositors and other creditors amounted to $18,850,000, or 58 per cent. of total loss for the forty years.

Summarizing the results the Comptroller finds that in thirty-nine years, 1865 to 1904, the losses to the depositors in the failed banks amounted to 29.21 per cent. of their claims. The aggregate loss was equal to 3.147 per cent. of the yearly average of the aggregate deposits in all national banks in the United States — failed and going banks together. Compared with the aggregate capital and surplus of all national banks the losses by creditors for forty-two years averaged .147 per year, or 6.17 per cent. for the whole term. The average for the last twelve years was .160 per year, or 1.92 for the whole term.

A glance at the figures in the table shows that the loss to stockholders must have been very considerable. The tables in the report do not go so fully into this matter, presumably because the government is not interested in it. Its concern is pretty much confined to the public, which comprises the creditors of the banks. The losses of the stockholders it regards more as being their private concern. They were the owners of the banks and, in a legal sense, responsible for their being properly conducted.

However, the figures give some idea of the stockholders' losses.

The amount of the capital stock of the failed banks was $59,047,420; their stockholders paid in assessments $17,362,345, making $76,409,765. Besides their capital stock there would be their surplus or undivided profits, some of which would represent reservations from earnings, and some premiums paid directly by the stockholders on stock issues taken by them. As to the amount of this latter, though the Comptroller's report does not give it, the information can be arrived at.

The total assets of the failed banks were given as $236,459,547. The aggregate liabilities, less capital stock, amounted to $170,236,026. Including the capital stock the liabilities would be $229,283,446. Thus the surplus, at time of failure, would be $7,176,101, the difference between the assets and liabilities; and the amount of the proprietors' interest ultimately would be:

Capital stock	$59,047,420
Surplus	7,176,101
Paid in assessments	17,362,345
	$83,585,866

Apparently they have fared as follows:

Cash returned by receivers	$2,094,705
Cash (their property) in receivers' hands	35,584
	$2,130,289
Nominal value of assets returned to stockholders	$9,512,682
Nominal value of assets still in receivers' hands	2,226,899

With regard to this last it is to be expected that the assets remaining in receivers' hands, and the assets returned to stockholders by the receiver would represent the dregs of the liquidation, and that they would be well nigh worthless. But it would not be safe to assume that nothing at all would be wrung out of them.

The whole business melts down to something like the following:

Depositors and creditors lost	$32,500,000
Stockholders lost	[1] 81,000,000
Total loss	$113,500,000

Losses accounted for, thus:

Loss on assets, compounded or sold	$92,000,000
Liquidation and law expenses	10,000,000
Assets probably worthless, returned to stockholders and held by receivers	11,500,000
	$113,500,000

The average annual aggregate capital and surplus of all the national banks in the United States for the forty-two years, from 1863 to 1905, was $710,670,504. The total of the stockholders' losses thus amounted to 11.40 per cent. on the average aggregate national bank capital in the forty-two years, or .27 per cent. per year.

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[1] Less what they may have realized from assets returned to them.

It should be remembered that this is the loss suffered by stockholders of banks that have failed and been liquidated. In the Comptroller's list of banks that have been placed in hands of receivers, there are some twenty-two institutions that were not liquidated but were restored to solvency. It is quite reasonable to conclude the stockholders of these banks, of a number of them at any rate, put their hands in their pockets and contributed fresh capital to set them going again. Unless this were done, some of them probably would have had to undergo liquidation; there would be, doubtless, a loss to stockholders in most of the cases, since no bank can very well suspend payment and have receivers or liquidators appointed, without its credit being greatly injured and the market value of its stock lessened.

Then, national bank stockholders have suffered losses through defalcations, bad loans, etc., which were not allowed to result in suspension of payments. There have been numerous instances of stockholders going deep into their pockets to contribute fresh capital to make losses good, and to enable their banks to continue as going concerns. One of the best known recent cases of this was that of the big Milwaukee Bank whose funds were lost in grain speculation by Bigelow, its president, a little over three years ago. So important were these losses that it was feared they would wreck the bank, and the occurrence exercised quite a serious influence on the New York stock market. A great many losses of this kind would never be heard of. The directors of a bank, coming to a knowledge of disastrous transactions, would naturally be disposed to restore any deficit that might be caused as quickly and as quietly as they could.

So it can safely be taken for granted that the losses of bank stockholders, under the American system, have been very much in excess of the $81,000,000 before mentioned.

As to the cause of the failures there are some very interestin gstatistics given by the Comptroller. The writer has picked out and classified the failures declared as being due to the various causes set down by the Comptroller, as far back as 31st October, 1889. This period, 1889 to 1906, covers the time when the stoppages were most numerous, 1891 to 1897, and a perusal of the table will discover what fault, in United States banking has been most prolific of disasters in the past seventeen years.

	No. of Banks.	With Capitals of
Defalcation of officers	2	$350,000
Defalcation of officers and fraudulent management	5	925,000
Defalcation of officers and excessive loans to others	1	50,000
Defalcation of officers and depreciation of securities	1	100,000
Depreciation of securities	10	2,885,000
Excessive loans, injudicious banking, and depreciation of securities	27	3,475,000
Excessive loans to officers and directors, and depreciation of securities	25	2,690,000
Excessive loans to officers and directors, and investments in real estate and mortgages	8	652,000
Excessive loans to others, and depreciation of securities	7	1,010,000
Excessive loans to others, and investments in real estate and mortgages	4	450,000
Excessive loans and failure of large debtors	2	110,000
Excessive loans to officers and directors	9	780,000
Failure of large debtors	7	950,000
Fraudulent management	13	1,051,000
Fraudulent management, excessive loans to officers and directors, and depreciation of securities	14	3,695,000
Fraudulent management and depreciation of securities	2	150,000
Fraudulent management and injudicious banking	23	4,500,000
Fraudulent management and defalcation of officers, and depreciation of securities	7	525,000
Fraudulent management, injudicious banking investments, real estate and mortgages, and depreciation of securities	5	600,000
Fraudulent management, excessive loans to officers and directors, and to others	11	2,950,000
Injudicious banking	17	1,525,000
Injudicious banking and depreciaiton of securities	41	4,575,000
Injudicious banking and failure of large debtors	12	1,145,000
Investments in real estate and mortgages, and depreciation of securities	6	70,000
General stringency of money market, shrinkage in values, and imprudent banking	49	7,995,000
Wrecked by cashier	25	2,470,000
Closed by run	2	2,350,000
Closed by directors in anticipation of run	1	200,000
	336	$48,858,000

A startling feature is the very large number of stoppages caused by dishonesty. "Defalcation of officers," "excessive loans to officers and directors" (which must be styled a species of dishonesty), "fraudulent management," "wrecked by cashier’’ figure as helping to cause the ruin of 161 banks with capitals of $24,373,000. Thus, in practically half the failures in the last seventeen years, dishonesty and breach of trust played a part in bringing them about.

It is to be regretted that statistics of banking failures in Canada, as full and complete as those pertaining to American National banks, and issued by the United States Comptroller, are not available. From a recent publication the following list of failures has been taken:—

Year.	Bank.	Depositors Paid
1868	Commercial Bank of N. B.	In full.
1872	Bank of Acadia	—
1872	Metropolitan Bank, Montreal	In full.
1879	Mechanics Bank, Montreal	57½ p.c.
1879	Consolidated Bank, Montreal	In full.
1879	Bank of Liverpool, N.S	—
1879	Stadacona Bank, Quebec	In full.
1879	Exchange Bank of Canada	66½ p.c.
1879	Maritime Bank, St. John, N.B	10 6-10 p.c.
1887	Pictou Bank, N.S	In full.
1887	Bank of London	In full.
1887	Central Bank of Canada	99 2-3 p.c.
1888	Federal Bank of Canada	In full.
1888	Bank of P. E. I	—
1893	Commercial Bank of Manitoba	In full.
1895	Banque du Peuple	75¼ p.c. to date
1899	Banque Ville Marie	15 p.c. to date.
1905	Bank of Yarmouth	In liquidation.
1906	Ontario Bank	In full.

In the last twenty-eight years, since 1879, ten banks have failed. Six of them paid depositors in full, another paid in full all but a fraction of one per cent., one paid 75¼ per cent., one 15 per cent., and with regard to a very small concern no statistics are available. It might be said that in only two instances, possibly in three, did the creditors lose. Their total losses probably would be something between two and three million dollars.

Stockholders have lost in them all, as was natural. Some losses have been made without failure taking place. In the banking reorganization that took place in Toronto in June of this year, there is an apparent loss to stockholders, based on market value of the new stock at date of writing and issue price of the old stock of the institution concerned, of something over $1,750,000. The apparent loss to Ontario Bank stockholders of equal importance are to be found. The failures since then were, Commercial Bank of Manitoba, Banque du Peuple, Banque Ville Marie, Bank of Yarmouth, Ontario Bank.

As for the causes of the Canadian disasters, the reorganization of this year would be put down as being due to injudicious banking. That of the Ontario Bank, to unauthorized speculation in stocks, the speculation being, however, on the bank's behalf. The Bank of Yarmouth failed through excessive loans to one large debtor. Fraudulent management claimed the Banque Ville Marie. That is the only one since the 'eighties." In the Ontario Bank case the fraud lay in the manager's concealing transactions from the directors and stockholders.

Probably it would be hardly correct to say that Canadian managers and officers are so very much superior to their American brothers in honesty as the statistics appear to show. But it can be said that under the Canadian system dishonesty in bank officials does not get anything like the same opportunity to show itself, or to do harm, as it gets in the States. Outside the two principal cities in Canada the bank officers, from the manager down, are subordinates constantly watched and inspected. The attention given to them is closer and more expert in character than the government examiners in the States can ever give to the National banks.

With regard to the directors, in the chief cities, they are chosen from the most honourable and prominent men in the Dominion. In a sense the boards of all the important banks are under the attention and scrutiny of the whole country. Though this fact may not force them to provide adequate measures for preventing their general managers deceiving them, it tends very strongly to keep them honest and upright in their dealings with their banks.

H. M. P. Eckardt.

MANUFACTURING STATISTICS IN RELATION TO PROSPERITY.

J. E. Boswell, Toronto.

IT was a good custom of our forefathers on the completion of any war in which they had been engaged, to take their battle axes and swords to the grindstone, put on a good, keen edge, and hang them up where they could be easily got at, and the chieftains then took counsel together for mutual protection.

If it is good business to prepare for war in time of peace, it should be equally good business to prepare in times of prosperity for the adverse business conditions which, sooner or later, must be faced by the manufacturer, and it seems worth while to take this thought as a text for a few minutes, in considering the necessity of adequate Mill Statistical Organization.

In the era of prosperity which Canada has been, and is, enjoying, all classes have, to a greater or less extent, participated. Manufacturing has developed and advanced by strides in most lines and prosperous conditions have generally been apparent, and the demand has been sufficiently liberal to prevent keen internal competition, and to permit of the maintenance of fair prices and remunerative business, but it has been *easy business*—orders have come in freely, and one of the greatest difficulties the manufacturer has had to contend with has been to deliver goods within a reasonable time. As profitable prices have been easy to obtain, close figuring has not been necessary, and the manufacturer, perhaps, is living in a fool's paradise,—hoping, and in some cases believing, that the present prosperous conditions will continue indefinitely and that no necessity will arise in the future for conducting his business on conditions of keen competition. Any thoughtful person must know that some day, earlier or later, there will be ushered in a period of business depression—it may be nearer than some of us think—and unless the manufacturer has been preparing in his prosperity, to meet all the conditions which accompany a period of depressed trade, he must be prepared to fight for his commercial life, handicapped in every essential that makes for success. Without the intimate knowledge of his business that only comes through the maintenance of adequate statistical records of production and cost, so tabulated as to enable him at all times to be able to feel the pulse of his business and promptly apply the proper remedy in every contingency, no manufacturer can hope permanently to compete, with success, against a properly organized opponent. He may endeavour to do so for a time, but sooner or later he must meet the full strength of that wave of keen competition for business which comes with hard times, when we may be sure the law of the survival of the fittest will leave him hopelessly out of the business race. The conditions accompanying depressed trade which the Canadian manufacturer has to face are, a reduced demand for his product, and the keenest internal and external competition to supply such demand by the home and foreign producer respectively. As tariffs go, Canada may be considered a low tariff country, and such being the case this market is bound to be the object of first attack by the world's large producers, and must be fed to the full with every class of manufactured goods which we are capable of consuming; but the foreign manufacturer, not satisfied with tempting us with prices based upon their lower cost conditions, and conditions of greater production, introduces slaughter prices to tempt the consumer, and the Canadian market is flooded with goods offered for sale at prices far below their cost of production.

What can be done to overcome these conditions? *Organization* is the key note of success, and to obtain successful results, every department must work in harmony with that idea, or discord and disaster will inevitably be the result, and the adoption of a proper system of organization and the maintenance of statistical records adequate to the needs of the business should be insisted upon in every manufacturing establishment.

Conceding the need and necessity of the statistical principle, it would be well for the Canadian manufacturer to ask himself whether his organization is all that it should be in this direction, and whether he has done, or is doing, all in his power in the times of prosperity which he is now enjoying to set his house in order in preparation for the days of adverse conditions which the future is sure to bring; or has he allowed things to drift, in the false hope that present prosperous conditions may be permanent. Each one *must* answer the question truthfully *to himself* and if he is wise, and a remedy is required, he will apply it promptly. It is not yet too late for him to so systematize his business that he may look into the future, in faith that he may meet such conditions as may arise without feeling undue fear, certain that he has done all that lies in his power to guard the future, and that he will be at no disadvantage in the race for profitable trade; or, if conditions should be such as to prohibit prosperity, that the adverse result may be reduced to a minimum.

The question may be asked, what constitutes perfect organization? In an article of a general character it is not intended to inquire into the requirements of different lines of business, each has necessities peculiar to itself, and any system, to be adequate, must be applied to suit these necessities without introducing cumbersome and unworkable details, which can only be carried out by departmental foremen, unaccustomed to office work, at a wasteful expenditure of time. There are, however, certain particulars in the way of statistics, in *every* line of manufacture, which are *essential* to prosperity. These particulars can only be ascertained by a careful and intelligent examination of the working of each business, and should be determined upon in relation to the necessities of a proper costing system, based upon some fixed principle, and not upon any rule of thumb methods, as it is to be feared are only too often the case. When the statistical particulars have been decided upon they should be recorded periodically in such permanent form, as may be found best suited to reveal the progress of the business from time to time, and make them easy of comparison one year with another.

Manufacturers in Canada have a right to expect from the Government such legislation as will protect them against foreign competition, and it may perhaps be conceded that it is the wish of the Government to meet the manufacturers in this direction, and frame such a tariff as will give to the home manufacturer some slight advantage over his foreign competitor; but the home manufacturer must not expect the Government to place a premium upon incompetence, whether it be in his manufacturing or organizing ability, and frame the tariff accordingly; but rather it is the duty of the Canadian manufacturer to so systematically organize his business that, *all things being equal,* he may meet competition from whatever source, and look to the Government for assistance when competition from abroad places him at a disadvantage in the home market; but he has only the right to expect this when he has himself done all that lies in his power to bring the cost of his product down to the lowest possible point, and this is only possible when his organization is perfect in every respect.

As the Government and the manufacturer are under certain obligations to each other, in like manner the manufacturer and his banker are brought into such close relations that the action of either may, under certain conditions, work to the disadvantage of the other. As a general rule manufacturers are large borrowers from the banks for the purpose of carrying on and developing their business, and, in addition to the obligation of repayment contracted with the loan, there are other unwritten obligations to his banker, in regard to the management and conduct of his business, which, to a greater or less extent, are matters of faith. As the manufacturer, under certain circumstances, has a right to expect consideration from the Government through the medium of the tariff laws, so he has, under certain circumstances, a right to look to his banker for support and assistance in times of commercial depression, and it may safely be stated that he may look, with every feeling of certainty, to such assistance and consideration, if he can point to a record of intelligent business management, and demonstrate his ability to manufacture and distribute his product at the lowest possible cost.

It is the business of the banks to loan money on such security as to them seems good and sufficient, and it is to their interest to support, as far as possible, every client in whom they have confidence; they have in the past stood loyally in support of old and tried clients and enabled them to weather the storms of commercial life, which would otherwise have brought disaster, but to obtain this assistance the manufacturer should be prepared to show that his business has been carried on with intelligence, and safeguarded at every possible point. It is not tangible security alone on which loans are made, but often on the moral security of a business record for honesty, competency and ability. If this is the case,—and it seems to be beyond contradiction—what, it may be asked, are the obligations of the manufacturer to his banker? That he is under obligation to repay the loans from the bank goes without saying,— but it is the only obligation resting upon him? It would be, were the loan made only upon realizable security. Such, however, is not the case, but as the moral risk is an intangible part of the security, it carries with it an obligation on the part of the manufacturer to his banker, that in every department of his business the fullest and most perfect organization will be maintained, and that he will readily furnish to his banker at all times such information as may be required. By taking his banker into his confidence to the fullest extent a mutual feeling of security is begotten; the banker can be consulted, and will be in a position to intelligently advise and suggest ways and means by which the manufacturer may hold his trade against whatever competition he may have to meet. It is to be feared, however, that, as a rule, manufacturers generally are far from acting in this direction, and only furnish to their bankers such details of their business as they think fit, and their bankers are left in complete ignorance of many details in regard to which their advice would prove of the greatest possible benefit and advantage, if they were placed in a position to discuss and advise. Some manufacturers make a boast that they do not care a straw for statistics, that they are often very misleading; but it must be admitted that if intelligently applied they should prove of the greatest possible advantage to every producer and the greatest success is impossible in their absence, and unless we are greatly mistaken manufacturers who continue to operate without full statistical records, upon which to base their operations, will awake some morning wondering what has happened overnight to cause their bankers to withhold supplies and pull the purse string tight. The answer will be found in the fact that the banker had not been fully taken into the manufacturer's confidence, and that operations had been carried on by rule of thumb rather than on the basis of properly applied statistics. The essential to successful manufacturing is *Production*; and the essential of profitable production is *Statistics*.

RESERVES IN THE UNITED STATES, CANADA, AND ENGLAND.

BANK reserves are for two purposes: first, to keep credit firm by the possession of enough cash to redeem such notes or deposits as may be presented for payment from day to day in the ordinary course of business; and, second, to be able to respond to unusual and unexpected demands for cash. In addition, after being sufficient to serve these purposes, they may be regarded as a potential loaning power, and may be utilized to prevent, so far as may reasonably be, extreme fluctuations in interest rates, which are equally disturbing to business and disadvantageous to the banks.

How large reserves should be kept to accomplish either or all these ends is a question that is likely to meet with increasing attention and study in the near future. Already it is causing a great deal of discussion in England. Before even an approximate estimate can be made, it is absolutely necessary that it be known what reserves are being carried at present. It is with the hope of furnishing information on this essential point that the present article is written.

The plan briefly is to group the banks of deposit of each country under consideration, to consolidate their balance sheets, and therefrom to ascertain their net liabilities and the amounts of actual cash carried. Savings banks and similar institutions are excluded, as their requirements as to reserves are naturally different from those of ordinary banks of deposit and discount. It is presumed that the reader is familiar with the banking conditions of the three countries discussed.

In the United States we have to consider banks of four classes,—national, state and private banks, and trust companies. The following consolidated balance sheet is compiled from the returns of the national banks for November 12th, 1906, and from those of the State and private banks and trust companies "for 1906," all as given in the reports of the Comptroller of the Currency. It is to be regretted that it is necessary to combine the returns of the State banks and trust companies; but, as the Comptroller of the Currency includes under the classification "State banks" a number of trust companies that, in his opinion, were banks of discount and deposit in fact, and trust companies in name only, it is deemed better to group the two classses as one. The returns of the national banks are absolutely complete, but those of the others are only approximately so. The missing returns are, however, only a small fraction of the whole, and, if they could be obtained, would affect the percentage of reserve but very little, probably decreasing it a trifle.

	6,199 National Banks Nov. 12, 1906. (Millions.)	9,604 State Banks and Trust Companies for 1906. (Millions.)	929 Private Banks for 1906. (Millions.)	Total. 16,732 reporting banks. (Millions.)
Loans and discounts.....	$4,366.0	$3,850.2	$94.4	$8,310.7
Overdrafts	53.7	33.0	2.0	88.9
United States government bonds	653.8	7.2	.5	661.6
Bonds, stocks and securities	724.0	1,165.0	6.5	1,896.6
Real estate furniture and fixtures	166.6	194.6	6.7	368.0
Due from other banks and bankers	1,139.6	802.1	24.7	1,966.4
Checks and other cash items, including exchanges for clearing house	414.1	99.8	.6	514.7
Cash on hand	634.5	302.0	6.7	943.3
Five per cent. redemption fund	26.5	—	—	26.5
Other resources	5.7	180.9	1.4	188.2
	$8,185.0	$6,636.2	$144.0	$14,965.3

	6,199 National Banks Nov. 12, 1906.	9,604 State Banks and Trust Companies for 1906.	929 Private Banks for 1906.	Total. 16,732 reporting banks.
	(Millions.)	(Millions.)	(Millions.)	(Millions)
Capital stock	$847.5	$690.2	$20.0	$1,557.7
Surplus and undivided profits	687.6	646.4	8.8	1,343.0
Circulation net outstanding	507.3	—	—	507.3
Individual deposits	4,289.7	4.750.4	109.9	9,150.1
Due to other banks and bankers	1,599.9	343.3	1.8	1,945.1
United States deposits and deposits of United States disbursing officers	140.4	—	—	140.4
Other liabilities	112.4	205.8	3.3	321.5
	$8,185.0	$6,636.2	$144.0	$14,965.3

From the above we find the deposit liabilities of the banks, other than deposits with each other, to be as follows:

Individual deposits in the national banks	$4,289,773,899
Individual deposits in the State banks and trust cos.,	4,750,401,919
Individual deposits in the private banks	109,947,509
United States government deposits in the national banks	140,401,722
Deposits of savings banks in other banks[1]	156,764,518
	$9,447,289,567

[1] See Report of Comptroller of the Currency, 1906, p. 35.

Of the deposits of the banks with each other we need take no account, as we are concerned only with their dealings with the community. Of course, this can be done only from the standpoint of considering all the banks consolidated, as it were. In the case of any one bank or group of banks the deposits of other banks would have to be included.

In addition to the above $9,447,289,567 of deposits, there is another liability of the banks to the people, in the outstanding national bank-notes. There is no special reserve required or kept for these notes; and, as they are precisely as much a liability as deposits, each being nothing more than a promise to pay, their amount must be added to the deposits to obtain the banks' total liability. It may be argued that, since the government guarantees their redemption on demand, they occupy the position of legal tender, and need not be considered in the question of reserves. But, though the government does redeem, it immediately makes itself good from the redemption fund furnished by the banks. The ultimate burden of redemption is on the banks, as it should be. It therefore seems proper to consider the notes as a liability against which a reserve should be kept. Their net amount outstanding is therefore added to the deposits as follows:—

Deposits as above	$9,447,289,567
Net circulation outstanding November 12, 1906	507,326,146
	$9,954,615,713

Against this liability of nearly ten billions the amount of actual cash was:—

Cash in national banks	$634,550,158
" " 5 per cent redemption fund	26,546,111
" " State banks and trust companies	302,047,098
" " private banks	6,761,156
	$969,904,523

equivalent to 9.73 per cent. reserve.

The cash held by the national banks consisted of specie and legal tenders. What the other banks held is not exactly known, as their returns on this point are incomplete. In a number of cases the cash held is unclassified. But the amount in doubt is not large in proportion to the whole. Taking the usual ratio in estimating mixed bills, we are probably within the facts in estimating that, of the unclassified cash, $25,000,000 were national banknotes. Now it is debatable whether banknotes should be included in the reserves of State banks or trust companies. Certainly, they ought not to be included in the reserves when, as now, all the banks of the country are being considered as one. Excluding the $25,000,000, the reserve would be reduced to 9½ per cent.

The national banks alone held 13.39 per cent. reserve against their individual and government deposits and circulation; against individual and government deposits alone 14.92

per cent. The State banks and trust companies held against their individual deposits 6.35 per cent., and the private banks 5.24 per cent.

If objection should be made to the inclusion of the national bank notes in the liabilities of the banks, the situation would stand thus:—

Deposits as above	$9,447,289,567

against which was carried

Cash in national banks	$634,550,158
" " State banks an trust companies	302,047,098
" " private banks	6,761,156
	$943,358,410

equivalent to 9.98 per cent. reserve.

As the banknotes are excluded from the liabilities, it is, of course, necessary to exclude the 5 per cent. redemption fund from the assets.

The following table is of interest as showing the tendency of the reserves of the national banks to decrease during the past decade. The first column gives the total "net deposits."[1]

The second column gives the reserve held in specie and legal tender plus 5 per cent. redemption fund (as allowed by the Comptroller) plus the amount on deposit with reserve agents. The fourth column gives the reserve in actual cash, specie and legal tender. Similar figures cannot be given for the State banks and trust companies; but, were they obtainable, it is not unlikely that they would show a similar tendency.

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[1] The "net deposits" are the amount, as computed by the Comptroller of the Currency, on which a reserve must be kept. It includes the amounts due to national banks other than reserve agents, to State banks and bankers, to trust companies and savings banks, and to approved reserve agents,— less the amounts due from national banks other than reserve agents and due from State banks and bankers,— and dividends unpaid, individual deposits, and deposits of United States disbursing officers, less exchanges for clearing house, national bank-notes and amount due from United States Treasurer. It will be noted that government deposits are not included.

NATIONAL BANKS (ON OR ABOUT OCTOBER 1).

	Net deposits. (Millions.)	Reserve held in cash, in redemption fund and on deposit. (Millions.)	Ratio of column 2 to column 1.	Reserve in cash. (Millions.)	Ratio of column 4 to column 1
1880..	968.0	323.0	33.4	172.5	17.7
1881..	1,111.6	321.6	28.9	172.6	15.5
1882..	1,118.6	303.9	27.2	174.8	15.6
1883..	1,168.7	328.9	28.1	188.4	16.1
1884..	1,098.7	346.1	31.6	219.8	20.0
1885..	1,248.2	415.4	33.3	263.5	21.1
1886..	1,301.8	377.2	29.	225.1	17.3
1887..	1,388.4	394.2	28.4	245.0	17.6
1888..	1,543.6	446.2	28.9	268.2	17.3
1889..	1,655.5	459.6	27.8	264.0	15.9
1890..	1,758.7	478.2	27.2	282.7	16.0
1891..	1,758.6	497.4	28.3	296.8	16.8
1892..	2,022.5	570.9	28.2	327.4	16.1
1893..	1,573.7	513.9	32.6	346.4	22.0
1894..	2,019.2	660.4	32.7	402.9	19.9
1895..	1,989.3	571.4	28.7	340.1	17.1
1896..	1,798.7	543.6	30.2	343.1	19.0
1897..	2,195.6	695.9	31.7	388.9	17.7
1898..	2,479.7	750.5	30.1	420.7	16.9
1899..	3,031.5	890.5	29.3	466.3	15.3
1900..	3,281.0	983.3	29.7	518.5	15.8
1901..	3,661.6	1,012.2	27.6	539.5	14.7
1902..	3,844.4	804.3	20.9	508.0	13.2
1903..	3,863.5	850.8	22.0	554.3	14.3
1904..	4,400.9	987.1	22.4	661.5	15.0
1905..	4,735.5	1,027.3	21.7	665.6	14.0
1906..	4,927.9	1,020.2	20.7	626.0	12.7

In Canada we have only to consider the banks chartered by the Dominion Government. The law requires no reserve to be kept against either notes or deposits. But the banks are obliged to file every month with the Department of Finance statements of their conditions. A copy of the summary of these statements for the month ending December 31, 1906, is here given. It will be noticed in this summary that the deposits are entered in two classes, the first payable on demand and the second payable after notice or on a fixed day. The first class consists of deposits which may be checked against, and on which, as a rule, interest is not paid; the second, of deposits upon which interest is paid and which are not subject to check. Technically, on this second class the banks have the privilege of requiring notice before payment, but, practically, that privilege is waived; and the second class is payable equally with the first class on demand.

CHARTERED BANKS OF CANADA, DECEMBER 31, 1906.

Liabilities.

36 Banks:	
Capital subscribed	$97,269,303
Capital paid up	95,509,015
Rest	69,258,007
Notes in circulation	78,416,780
Due Dominion government	4,730,421
Due Provincial governments	9,687,270
Deposits on demand	192,143,482
Deposits payable after notice or on a fixed day	398,765,182
Deposits elsewhere than in Canada	64,191,182
Loans from other banks in Canada secured, including bills rediscounted	5,717,720
Deposits made by and balances due to other banks in Canada	6,395,645
Balances due to agencies of the bank or to other banks or agencies in the United Kingdom	8,207,158
Balances due agencies of the bank or to other banks or agencies elsewhere than in Canada and the United Kingdom	1,716,823
Other liabilities	12,684,795
Total liabilities	$782,656,528

Assets.

Specie	$23,752,750
Dominion notes	44,266,154
Deposits with Dominion government to secure note circulation	4,327,669
Notes and checks on other banks	38,937,901
Loans to other banks in Canada secured, including bills rediscounted	5,717,714
Deposits made with and balances due from other banks in Canada	9,832,685
Balances due from agencies of the bank or from other banks or agencies in United Kingdom	7,844,990
Balances due from agencies of the bank or from other banks or agencies elsewhere than in Canada or United Kingdom	15,512,627
Dominion and Provincial government securities	9,536,448
Canadian municipal and British or foreign securities	21,376,833
Railway and other bonds, debentures and stocks	41,455,319
Call and short loans on stocks and bonds in Canada	57,511,747
Call and short loans elsewhere than in Canada	58,958,156
Current loans in Canada	548,684,480
Current loans elsewhere than in Canada	36,474,231
Loans to government of Canada	3,217
Loans to Provincial governments	1,356,967
Real estate other than bank premises	918,028
Mortgages on real estate sold by bank	420,959
Overdue debts	3,048,289
Bank premises	14,860,607
Other assets	9,394,586
Total assets	$954,192,546

According to the above statement the total deposits were $669,517,537, and the gross note circulation $78,416,780, a total of $747,934,317. Against this sum was held $68,018,904 specie and legal tender, a cash reserve of 9.09 per cent.

In addition to their cash the banks held on deposit in foreign banks $13,433,636. This amount is the difference in the above statement of the balances due from agencies of the bank or from other banks or agencies in the United Kingdom, and elsewhere than in Canada and the United Kingdom, and similar balances due to. These foreign bank balances are principally deposits in London, New York, and Chicago, and in estimating the reserve certainly ought to be included as much as the deposits of our national banks with each other. Adding $13,433,636 to the specie and legal tenders as above, we have a total of $81,452,540 in cash and on deposit, or 10.88 per cent. reserve.

The following table shows the circulation and deposit liabilities of the banks since 1890, together with their reserves in cash and on deposit and their proportions:—

Dec. 31 Year.	No. of Banks.	1 Gross circulation and deposits.	2 Specie and legal tenders.	3 Net foreign balances.	Ratio of column 2 to column 1.	Ratio of columns 2 and 3 to column 1.
		(Millions)	(Millions)	(Millions)		
1890.	40	$174.7	$16.3	$11.7	9.34	16.03
1891.	38	194.3	15.9	22.1	8.17	19.58
1892.	39	213.8	19.1	18.5	8.88	17.57
1893.	39	211.3	21.0	17.4	9.92	18.18
1894.	38	222.1	23.2	24.7	10.45	21.57
1895.	38	226.9	24.2	21.7	10.66	20.25
1896.	38	235.2	23.8	23.1	10.12	19.97
1897.	38	267.4	26.0	38.1	9.72	23.95
1898.	38	294.3	26.0	32.6	8.85	19.93
1899.	38	326.3	27.5	29.1	8.42	17.34
1900.	36	356.1	31.5	12.2	8.86	12.28
1901.	34	428.7	32.7	16.1	7.62	11.37
1902.	35	477.5	37.6	15.9	7.87	11.21
1903.	33	504.7	47.0	17.2	9.32	12.73
1904.	34	569.4	56.0	26.2	9.84	14.44
1905.	34	637.8	58.7	17.0	9.20	11.86
1906.	36	747.9	68.0	13.4	9.09	10.88

It will be noticed in the above table that the reserve in cash has been maintained at about the same percentage in a remarkably even way. The decline in the reserves of cash and on deposit is probably more apparent than real. There is reason to believe that, when the Act of 1900 required a more detailed classification of the loans held, several of the larger banks entered, under the head of "call and short loans elsewhere than in Canada," loans made by their agencies in the United States and which they had previously entered under the heading "balances due from agencies," etc. This *would account for the sudden drop in their foreign balances in* 1900.

When the student turns to the United Kingdom and attempts to view banking conditions as they exist there to-day, he finds a situation very different from that in Canada or the United States. In the first place the banks are not obliged by law to keep reserves or even to make reports or statements of their condition. It is, therefore, difficult even to know how many banks exist. Apparently, there are, exclusive of some sixty to seventy colonial and foreign banks, about two hundred joint stock and private banks, with some 7,500 offices. It is only within the last thirty years that expediency has induced some among them to make statements of their condition to their stockholders. Indeed, in 1877, when the well known English writer, Mr. Palgrave, sought to compile such figures, he was assured by some people of great experience and high in authority that it could never be done. But that has brought about a change, and to-day ninety-nine banks, including most of the large banks (and, of course, the Bank of England), make annual returns. These returns are by no means complete, but they give us a good deal of information.

The following summary or consolidated balance sheet of the banks making returns for the year 1905 is from the London *Bankers' Magazine* for April, 1906:—

Liabilities.

Capital	£84,564,375
Rest	49,019,032
Acceptances, indorsements, etc.	33,312,891
Deposits and current accounts	881,546,816
Note circulation	43,863,946
Miscellaneous liabilities	8,085,999
Total	£1,100,393,059

Assets.

Cash in hand, at call, and on short notice	£253,147,748
Government securities	102,623,577
Other securities	111,091,301
Bills discounted, advances, and loans	572,776,036
Acceptances, indorsements, etc., *per contra*	33,312,891
Buildings and sundry assets	27,441,506
Total	£1,100,393,059

For convenience the Bank of England statement for December 20, 1905, is also given. This statement is included in the consolidated balance sheet:—

BANK OF ENGLAND.

Issue Department.

	Liabilities.	*Assets.*
Notes issued	£45,648,245	
Government debt		£11,015,100
Other securities		7,434,900
Gold coin and bullion		27,198,245
	£45,648,245	£45,648,245

Banking Department.

Proprietors' capital	£14,553,000	
Rest	3,273,248	
Public deposits	7,816,972	
Other deposits	44,221,033	
7 day and other bills	99,413	
Government securities		£12,798,989
Other securities		39,535,486
Notes		16,297,185
Gold and silver coin		1,332,006
	£69,963,666	£69,963,666

As Mr. Palgrave estimates the total deposits of the banks of the United Kingdom, exclusive of those of the colonial and foreign banks, at from one thousand to eleven hundred million pounds, the above summary represents perhaps 80 per cent. of the resources and liabilities of the banks of the country.

The liabilitites first claim our attention. Omitting the acceptances and indorsements, which are a contingent liability and concerning which it is a debated question as to whether they require a reserve, we find that the banks are liable to the community for their deposits, current accounts, and note circulation in the sum of £925,410,762. Against this amount there are held in "cash" £253,147,748 (including the coin and bullion held by the Bank of England in both its departments). This so-called cash reserve equals 27 per cent. of the liabilities, and compares with 27 per cent. in 1904, 26 per cent. in 1903, 28 per cent. in 1902, 27 per cent. in 1901, 23 per cent. in 1900, and 24 per cent. in each of the years 1899-1898 and 1897.

But this "cash" reserve is, in fact, by no means a reserve of cash. It includes not only cash in hand, but "cash" at call and at short notice, and there are no official figures to give the proportion of each item. It is much to be regretted that this is the case. Still, some progress can be made, though it will be far from satisfactory, and the conclusion arrived at can be at best only a guess.

Twenty banks return under separate headings, (1) the cash in hand and on deposit in the Bank of England, (2) money at call and on short notice, and show about equal aggregate amounts so held. Banks making this distinction in their accounts are probably quite as strong in the percentage of cash in hand and on deposit in the Bank of England as those that do not so differentiate; and it is a fair presumption that, of the total of £253,147,748 "cash" held by all the banks, not over one-half, or say £125,000,000, is in hand or on deposit in the Bank of England. Although the Bank of England has not since 1877 stated the amount of deposits of the other banks, it is good opinion that they amount to from £20,000,000 or £30,000,000, or from 50 to 75 per cent. of the "other deposits" (that is, deposits other than those of the government). Calling them £25,000,000 and subtracting that amount from £125,000,000, we have left £100,000,000 "cash in hand," or 10.8 per cent. reserve. But part of this "cash in hand" consists of Bank of England notes; and it is understood that part represents checks for clearing and remittances in transit. The amount of Bank of England notes outstanding, exclusive of those held by the bank itself, was £28,500,00. For the sake of argument we may say that half was held by the banks. An estimate by an English writer, Mr. Gibson, places the amount at twenty millions. The total clearings of the London and provincial clearing houses for the year 1905 were £12,900,000,000, or at the rate of £43,000,000 a day. As the reporting banks represent about 80 per cent. of the banking done in the United

Kingdom, 80 per cent. of £43,000,000, or £34,000,000, might represent their checks for clearing and remittances in transit. Calling it £25,000,000 (to be on the safe side), and deducting that amount, and £14,000,000 for the Bank of England notes held by the banks, from £100,000,000 "cash in hand," and there is left £61,000,000, which may be the specie held by the banks. This estimate is in accord with current figures as to the total specie in the country. In November, 1905, Mr. A. Clayton Cole, a director of the Bank of England, estimated that the total stock of gold in the United Kingdom, both in the pockets of the people and in the banks, was about £110,000,000; and the director of the United States Mint estimates the stock on December 31, 1905, at £112,000,000. If the estimate of £61,000,000 held by the banks is accurate, the specie reserve would be about 6.5 per cent., nearly one-half of it, or £28,500,000, being in the Bank of England.

It may be objected that, as the Bank of England notes are legal tender, they should be included as cash. The above figures would then have to be altered as follows: the £253,147,748 "cash at hand and at short notice" would be reduced by £27,198,245, the amount of specie and bullion held by the Issue Department of the Bank of England, and increased by £16,297,185, the amount of notes held by the Banking Department, and would become £242,246,688. One-half of this amount, or £121,000,000, would be the cash at hand and on deposit, and £96,000,000 the cash at hand. Deducting the same allowance of £25,000,000 for checks for clearing and remittances in transit, there is left £71,000,000 specie and Bank of England notes, or 7.6 per cent. reserve.

An interesting corollary is the condition of the joint stock banks exclusive of the Bank of England. Deposits, current accounts, and circulation would then be £843,922,274, specie £32,500,000, and specie and legal tenders £46,500,000. The reserve in specie would be 3.8 per cent., and in specie and legal tenders 5.5 per cent.

During the last few years there has been much discussion in England regarding the inadequate reserves of the banks.

As illustrating the criticism of the present situation, the following from the London *Bankers' Magazine* for May, 1906, is of interest:—

> While the specie reserves of individual banks have recently, in some cases, been increased, there has been scarcely a corresponding increase in the reserve of the Bank of England. It is true that as compared with the amount held twenty-five or thirty years since there has been a considerable increase. The liabilities of the bank, however, have increased more largely than the reserve, and the proportion of the reserve itself to the liabilities of the banks generally is distinctly smaller on average than it used to be...... Up to the present time none of the suggestions made for meeting the difficulty have been found practicable, though the risks to our business supremacy which an inadequate specie reserve implies increase, and meanwhile the constant variation in the bank rate, which are closely connected with the narrow limits of the reserve, are the source of continual injury to business.

The London *Economist* of November 25, 1905, commenting upon the situation, says,—

> The only question remaining in regard to it [the gold reserve] is how such a perilous defect in our monetary system is to be remedied.

It is hard to see how progress in reaching a solution of this difficult problem can be made until the facts are known; and these cannot be known until the banks are obliged to make complete and uniform statements.[1]

F. S. MEAD.

BROOKLINE, MASS.

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[1] Since the above was put in type, the statement of the banks for 1906 have come to hand. The deposits, current accounts, and note circulation were £954,925,638; the cash on hand, at call, and on short notice, £261,637,514; the ratio 27 per cent., the same as in 1905. The deductions drawn from the statements of 1905 and the ratios obtained, if correct for 1905, would be equally so for 1906.

THE BANK OF JAPAN.

THE annual address of Governor Matsuo, who conducts so wisely and well the business of the Bank of Japan, is always excellent in matter and style, and the growth of our trade relations with the country of the Mikado interests us in the welfare of his subjects. In explaining the financial conditions and the bank's operations for the past year, the great Eastern banker spoke as follows:—

"The year under review may be described as a period of transition during which financial conditions were awakening from the state of torpor induced by the war. The first half of the year passed very quietly, but on entering the second half a tendency to gradual activity manifested itself. Nevertheless on the whole the year may be said to have terminated calmly and uneventfully. For, although from the time of the outbreak of war considerable sums of money had been scattered through the country in the form of military and naval outlays, thus gradually producing a plenitude of floating capital, still the people at large remained under the influence of a sentiment of caution. Moreover, the spring season was marked by an abundance of political affairs. Thus, a Special Finance Law for Consolidating the National Debts, a Law for amending portions of the Extraordinary Tax Law, a Law for the Nationalization of Private Railways, and other measures, all having an important bearing on the national economy, were presented to the Diet, giving rise to much discussion and apparently bewildering people's minds. Moreover, as the facts relating to the failure of the previous year's crops in the north-easterly districts became known, and the very severe suffering thus entailed was bruited abroad, a still greater sense of depression was produced. Probably for these reasons business conditions throughout the country did not show any sign of recovering from the dullness of the previous year. It is true that from January welcome followed welcome in honour of the troops returning victorious, so that an outward appearance of the revival was presented by the market; but this briskness was confined to transactions of retail trade and did not make itself felt to any great degree in the world of general business. Further, at the time when woven stuffs, which constitute a barometer of the general commercial condition, were inclining to a state of depression, a violent depreciation of cotton yarns, which took place in April-May, inspird apprehension as to the future course of events and resulted in a general decline of production. It is true that during this time an increase of the spinning industry and schemes for the establishment of various new enterprises found some few promoters, but, nevertheless, in response to the commercial depression, there seemed to be a renewal of the tendency to look seriously ahead. On the other hand, if the state of the money market be considered, it is seen that the payments on account of war outlays continued month after month from the beginning of the year, leading to an increased scattering of capital, while, at the same time, as a result of the spread of a war-induced spirit of effective economy among the people, large sums were placed on deposit in the banks. Money became easy both in town and in country, and the banks in the various localities set themselves to lower their rate of interest on deposits. This began during February in Osaka and Nagoya, and other places took a similar step. Our Bank, since raising its rate of interest in June of the year 1905, had maintained the increased figure in conformity with the state of the market, but, in due appreciation of ruling conditions, two reductions of 2 rin each were made in the daily rate during March and May.

At the commencement of the second half of the year, the fineness of the weather and the prospect of a good harvest brought signs of a recovery of tone. Business, which had been so long depressed, began to revive. Woven stuffs and in their sequel all kinds of merchandise gradually came into active demand. Thus, in September, when subscriptions were invited for the South-Manchuria Railway shares, the applications amounted to an extraordinary figure, and the share market, which from the spring, had developed an upward tendency under various influences, grew increasingly active; the inception of various new enterprises grew gradually more frequent, and there were occasional apprehensions lest an abuse of this disposition should be witnessed. Still the financial condition remained as easy as ever and thus the close of the year approached. There was, indeed a temporary increase of demand for accommodation, but this was merely the outcome of business arrangements incidental to the close of the year, and thus the situation may be summed up by saying that things passed quietly alike in business and in finance.

Such having been the state of affairs in the money market, the amount of this Bank's accommodation to the public did not show any marked increase. Bills occasionally issued by the Treasury were taken up, a temporary increase of advances being thus involved. Money being plentiful, however, the sale of these securities proved easy. They were disposed of either at once or in a few days, and the Bank rapidly recovered the funds it had devoted to this purpose. Only, as above stated, at the end of December, owing to the temporary occurrence of demands from the banks for accommodation to settle the year's accounts, it resulted that on the last day of the year our loans aggregated 115 millions, our note issues passed 341 millions and our excess above the legal limit reached 74 millions.

Thus, although there were not many occasions demanding special procedure on the part of the Bank towards the money market, it can not be said that the due manipulation of finance did not call for certain measures. After the close of the belligerent situation a need for business-capital arose from time to time on the part of companies and corporations, but in spite of the easy state of the domestic money market, there was a disposition to seek advantage in recourse to foreign capital, a route for its importation having been opened, and this tendency extended even to small sums. Of course there is nothing wrong in using foreign capital, but the development of such a prevalent disposition must be regarded as an evil. There were many reasons for it, but that a proximate one was the high rate of interest in Japan can not be questioned. Therefore, in July this Bank took steps to equalize the rates of interest, which had hitherto varied according to localities, at the head office and its branches, and further, at the same time, to abolish the premium habitually charged on bills of exchange drawn mutually between the head office and its branches, so that the rate of interest became everywhere uniform. Improvements were also effected in means of intercommunication and facilities provided for the circulation of capital, by which means it was hoped that interest would develop a tendency to fall.

There are further some matters that must be reported in connexion with the Bank's establishment. They relate to our branches in Hokkaido. Guided by business conditions, we originally placed a major branch in Hakodate under the name of the Hokkaido Branch, and minor branches besides in Sapporo and Otaru, but, owing to recent developments of transport facilities, entries and clearances of merchandise at Otaru Harbour have increased yearly, so that the place has become the most important port in Hokkaido. Last August, therefore, we converted the minor branch there into a major branch, under the name of the Otaru Branch. At the same time, we made the Hokkaido Branch into a minor branch, and closed the Sapporo minor branch, there being no longer any occasion for it.

Reviewing the foreign commerce of the Empire, we find that exports totalled over 423,750,000 *yen* and imports over 418,780,000 *yen*, the whole trade thus bulking 842,530,000 *yen*. These figures, compared with those for the preceding year, show an increase of 102,220,000 *yen* in exports, and a diminution of 69,750,000 *yen* in imports, but an increase of more than 32,460,000 *yen* over the whole trade. Our foreign trade has, in fact, a strong progressive trend year by year, nor did it lose this trend ever during the two years of the war. Nevertheless, the increment that took place during the war was mainly due to an increase of imports in the shape of war material, and cannot therefore be regarded as a purely natural development. Now, however, the result of last year's trade shows that, although simultaneously with the diminution of demand for war material a marked reduction was shown in the bulk of imports, nevertheless a very large increase took place in exports, and thus the net result was excellent. There were many reasons for this growth of our exports. The principal of them doubtless was the prosperous condition of trade in the countries of the Occident, which caused an augmented demand for our goods, and the gradual development of commercial marts in China and Korea. Moreover, another factor that must not be lost sight of was the activity of our producing centres. To mention the chief of these, namely, sericulture, it is noticeable that although the mulberry trees suffered from frost in the spring so that a serious diminution was anticipated for a time, sericulturists throughout the country so greatly increased the *graine mise en incubation*, by way of a *post-bellum* enterprise, that in the end there was no falling off compared with an average year. Moreover, in order to make up at the autumnal season for the diminution in the spring, great industry was everywhere exercised, and thus not only was the previous deficit replaced, but a larger outturn than usual was obtained, and further, the quality of the silk was exceptionally good. Similarly earnest endeavour was shown in the fields of cotton spinning, *habutae* weaving, copper and coal production and sugar refining, and the resulting large development of the volume of production may be regarded as an important cause of the growth of exports.

It is indeed, gentlemen, a matter of satisfaction both to you and to me that, during the year under review, the financial condition of our country was, on the whole, so tranquil and that our foreign trade made such a good showing. Neverthelesss, when it comes to looking forward, we have to recognize that there are some things which do not warrant entire peace of mind. As a consequence of the war our country has been burdened with a heavy weight of foreign debt. It is true that as a means of defraying the interest and paying off the principal the Government has framed a special law for consolidating the public debts and has made due provision for their redemption. Hence, so far as the discharge of this debt is concerned, no cause of uneasiness exists. But an inevitable result is that an addition has had to be made to our countrymen's load of taxation, and in order to carry that load easily as well as to promote the further development of the country's fortunes, it is essential that the nation's producing capacity should be increased and its stock of capital supplemented. The way to increase production is to encourage the growth of profitable undertakings. There has been of late a very great movement in the world of enterprise, and it is not possible to speak with assurance as to the nature of all the projects mooted. Nevertheless, I earnestly hope that among them are some which by stable and advantageous prosecution will help to develop the national resources. Of course it is inevitable that where there is gain there must also be some loss. At a time when the spirit of enterprise is in the ascendant, there can not but be schemes of an unsound character, and many speculative essays to secure temporary profit. It devolves upon capitalists, by exercising careful judgment, to discriminate between the good and the bad and to check the consummation of bubble projects. That goes without saying. But, at the same time, much depends also on the procedure of the bankers, who perform the function of supplying capital. It behoves these bankers, on an occasion like the present, to exercise far-reaching caution and to be thoroughly on their guard, so that by their action the sound may be assisted and the unsound deterred. I, upon whom rests the responsibility of conducting the Central Bank, intend to be guided strictly by this policy in the interests of the country and to conduct business on circumspect lines. I trust that I have succeeded in making myself clear to you all, gentlemen."

Bank of England Gold Rate.—There is a chance for misapprehension in the use of the term "the price of gold" in London. Gold being the measure of value and medium of exchange it can, properly speaking, have no price in terms of itself, but only in terms of something else used as a medium, as in case of a depreciated currency. As a pound sterling consists of a certain weight of gold, the value of any weight of gold is simply a certain proportion or multiple of the pound sterling. The mint value of an ounce of pure gold in London is 77 shillings 10½ pence, but anybody can take bullion to the Bank of England and receive for it at once 77 shillings 9 pence, the difference representing the assumed interest for the time required for converting it into coin at the mint and making it available to the bank for circulation.

Between these limits and only between them can gold fluctuate at the Bank of England, which is virtually the arbiter of the international movement of the metal. Everybody offering bullion in prescribed quantity is entitled to receive 77 shillings 9 pence for it in notes of the bank, and he may receive a little more if it is worth the bank's while to pay it for the sake of getting the metal for its reserve, but it cannot go above the mint value, which would be making the bullion worth more than the coin, and then the coin would be drawn away. The bank will never pay more for gold than it is worth for coining, nor will anybody pay more. If it should offer more for it than its mint value its own coin would be speedily converted into bullion and sold to itself. If it should charge more its coin would be drawn by presenting notes for redemption and sent abroad instead of bullion. Properly speaking, there is no such thing as "price of gold" in London.—*N. Y. Journal of Commerce.*

THE CANADIAN LAW OF BANKS AND BANKING.

This recent addition to Banking literature is by John Delatre Falconbridge, M.A., LL.B., of Toronto, and deals with the Canadian Acts respecting Banks and Banking, Bills of Exchange, the Currency, and the Incorporation of the Canadian Bankers' Association. In form it follows very closely J. J. McLaren's two books on the same subject, quoting the text of each act, section by section, followed by the author's comments and mention of legal cases bearing on the particular point in question.

In a short preface Mr. Falconbridge tersely explains its *raison d'être.* "Since 1901, no commentary on the Bank Act has been published and the cases on the subject which have been reported during the last six years are both numerous and important."........ "Both the statutes above mentioned (the Bank Act and Bills of Exchange Act) have undergone great changes in form in the revision of 1906."

By giving in his first two chapters a review of banking legislation in Canada, and a short history of the evolution of usage and the law merchant, and again in Chapter XXXI, "an introduction to the Bills of Exchange Act," the author provides an innovation which we think will commend itself to all students of banking. The study of a legislative enactment resembles very much in this respect, the witnessing of the end of a game of chess; it detracts greatly from one's interest to have missed the early moves of the game.

The explanations of the various sections of both Acts are, as a general rule, concise and clear. In this connection, however, may be cited one of those exceptions which, in some mysterious way, are said to prove a rule. On Page 141, in dealing with the business and powers of banks, this paragraph occurs:

"But when a bank gives a customer 'a line of credit, to be secured by collections deposited,' it is bound to credit the customer with the payments made from time to time on collateral notes deposited with the bank by the customer in accordance with the memorandum. It cannot hold the payments in a suspense account until the maturity of the customer's own paper given to the bank to cover the line of credit, and take judgment against the customer for the full amount of that paper."

The author in this case should have made it perfectly clear that by "credit the customer with the payments" is not meant to credit his current account, but to apply them in reduction of the loan. The practice of placing such payments in a separate "suspense" or "collateral" account, which at first glance, appears from this paragraph to be illegal, is, in fact, that followed by banks in practically all cases of this sort.

In Part II, dealing with Bills of Exchange, Mr. Falconbridge notes very carefully the differences between our law and the English Act on which it is based. The four chapters devoted to presentment for acceptance, presentment for payment, dishonour, and protest, are systematically arranged and complete.

The book occupies 651 pages of actual text and is supplemented by every full index. Considering the ground covered, this cannot be considered excessively voluminous. As a text book for young bank officers, it suffers from the very frequent references to previous sections, to legal cases, and to other works on the subject, which render it in some places wearisome reading; but this fault becomes its greatest virtue if one's object in consulting it, is to get *all* the information available on a particular point.

S. C. NORSWORTHY.

(Banking and Bills of Exchange; The Canada Law Book Co.'y, Toronto.)

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[1] EDITOR'S NOTE.—The changes referred to were in form only, being confined to the division and sub-division of sections of the Bank Act by which the numbering and not the legal intent and meaning of sections was changed.

TOO MUCH EXPANSION.

THE annual address of the President of the New York State Bankers' Association to its members cannot fail to be interesting to bankers in this country, and the recent message delivered by Mr. Elliott C. McDougal, of the Bank of Buffalo, contained wise and timely advice for others than his countrymen.

Mr. McDougal is an ardent advocate of a policy of retrenchment, he deplores the present pace in industrial, commercial and banking pursuits. He claims that we are living in an era of extravagance, both corporate and individual, and that " feverish business activity " renders the present pace killing.

As a cure for this condition of things, the ex-president of the New York Bankers' Association thinks that a moderate dose of what is known as " hard times " may prove to be the only cure.

Manufacturers, merchants, bankers, and all thoughtful Canadians will cordially endorse the following utterances of Mr. McDougal, illustrating as they do a state of affairs not confined to the business world of the United States:

"An employer of skilled and unskilled labour reports that in his trade wages are 30 per cent. higher than a few years ago, and the product of a day's work considerably less. He estimates that he gets very little more than half as much work for a dollar as formerly. No doubt men in this audience can name trades in which the daily wages have nearly or quite doubled in ten years, while the daily product has decreased. Many men do not work every day. Some earn enough in three or four days to supply their needs for a week. Here is a two-fold economic waste. A workman does not do a full day's work for a full day's pay. He does not work full time. No doubt many, perhaps most, men work full time, but very few do a full day's work for a full day's pay—such a day's work as could easily be done, as in all honesty and fair dealing should be done. Now this waste produces inflation of values analogous to the inflation produced by watering stock and bond issues of corporations. This inflation must inevitably be reckoned with. When the day of reckoning comes, the values of all properties will shrink to their true cost basis. This adjustment of values cannot occur without accompanying disturbances of credit and consequent business troubles. Every good business man knows that the end of constantly rising prices must some time be reached, and that when that time comes, prices will not remain stationary at the high level, but will start on the long expected decline. Business men should not dread but should welcome that time. We are not to-day on a sound basis. We cannot get back to a sound basis until we have a decided check. The longer that check is delayed, the more severe will it be.

Expansion is not confined to the industrial and commercial world. For years banking liabilities have been expanding out of all proportion to the growth of cash reserves. For several years there has not been a week in which all the New York Clearing House banks have held full reserves, and frequently half, or nearly half, have been short. The same tendency prevails throughout the country. Is it not time for bankers to check this undue expansion, to prune this tree too luxuriant for its roots; this fabric of credit built on an inadequate foundation of reserve? Consider that our reserves consist largely of balances due from other banks. The system of reserve agents, both in our state and national banking system, with which you are all familiar, the abolition of which would be opposed by most if not by all of the bankers in this room, contains possibilities of serious trouble; nay, more, invites serious trouble. For instance, a state bank near Buffalo has an account with a trust company in Buffalo. The bank receives a deposit of $10,000. It re-deposits the amount with its reserve agent the trust company; the trust company re-deposits the amount with its reserve agent, a state bank in Buffalo; the state bank re-deposits the amount with its reserve agent, a correspondent in Albany; and the Albany bank re-deposits the amount with its reserve agent, a correspondent in New York City. Here is one $10,000 deposit multiplied by five, swelling deposits in this state by $50,000, and swelling so-called reserves by $42,500: against which the only cash reserve held is that of the New York bank, amounting to $2,500. Is not this inflation?

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"When our next financial disaster comes it will cause widespread disturbance and promote panic. We should remember that most of the reserve cities in the National system have sprung up in recent years, and were not in existence during the panic of 1893. The system has not stood the test of a financial crisis. I know that country bankers desire interest on their reserve accounts, and that banks in reserve cities desire such accounts. Nevertheless, I advocate that whatever reserve may be required by law, *that reserve shall be in cash in each bank's own vaults, and that the present system of reserve depositories, both state and National, be abolished as most unsound and dangerous.**

National bank notes should not be counted as reserve, whether by National banks, state banks or trust companies. National bank notes are not money, but promises to pay money, in no essential differing from liabilities on certificates of deposit, on cashier's checks, or on open accounts payable on demand. I hope that the New York State Bankers' Association will never disgrace itself by endorsing a proposition to make mere promises to pay legal reserve. All honour to the New York Clearing House Association for the stand it maintains on this point. The debt of a bank to it cannot be settled by swapping one bank debt for another, a promissory note for a debit balance, after the fashion of a merchant in the time honoured story who gave his promissory note for an account which he had long owed, saying, "Thank God, that debt is paid." A debit balance at the New York Clearing House must be settled for in lawful money. Bankers of this state need just as high a standard as bankers of New York City. Our reserves should be kept in money good throughout the world. Do not forget that when several kinds of money or currency—and all currency is not money—are in circulation in any country, and the total of all kinds exceeds the sum needed at the time to transact business, plus the sum required for reserve, the best money is always the first to leave the country. Were banks required to keep all their reserves in actual money, which should be the world's best money, they would find means to procure and keep it at their own proper expense. Our banking system would then be absolutely sound in that most important particular.

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* The *italics* are ours.—EDITOR.

Now, as to currency reform. We shall never settle this question until we approach it from the proper point of view. We must forget our own selfish interests as bankers and seek a solution that will be for the best interests of the public. The public should have the safest, cheapest and cleanest currency that can be furnished, even if the banks be compelled to furnish it without profit. The public should be able to get this currency when it desires, in such denominations as it desires, and to get it redeemed in actual money without notice, at as many places as the necessities of business require. Because such currency would pass from hand to hand without endorsement, the government should protect holders by establishing a redemption fund, to be raised by a tax on circulation, by guarding against over-issues, and by printing the currency in the best possible manner to guard against counterfeiting. Possibly the currency should be made a first lien on the assets of the issuing bank. Beyond that, the government should no more interfere than it interferes to-day if a bank's customer wants its cashier's check or certificate of deposit, or credit on its books against which he can check. I repeat that currency issued by a bank is not money, but simply its promise to pay money, and differs in no vital respect from its certificates of deposit or its cashier's check. Bear in mind also that bankers are only to a very limited extent dealers in money. They are principally dealers in credit, and their customers should have the privilege of exchanging their own credit obligations which will not pass current, or their credit balances with their banks, for the credit obligations of the banks, in the form of currency, which will pass current.

Some authorities hold that the public would not accept unsecured currency, even should a sufficient redemption fund be provided, that the reason our present National bank currency is accepted everywhere and at all times is because it is secured by Government bonds. I venture flatly to differ from this view. The average man does not know that the currency he handles is secured. He has not even thought of the question. He accepts such currency freely because neither he nor any one he knows has ever lost a dollar on a National bank note, or has ever heard of one who has, and for no other reason. I do not wish to be understood as advocating more currency per capita. With a proper system we would need less. In spite of the dearth of fluid capital, we have, at present, more currency in circulation than we actually need, and as a consequence gold, the best money, is leaving this country, even while we say that for lack of money railroads are suspending contemplated improvements. The railroads need more capital, not more currency. In these prosperous times, when banks are well satisfied with current earnings, we must not forget that we have duties, and that one of the most important of our duties is to study and solve the currency problem, not for our benefit but for the benefit of our depositors. As a thoughtful and reliable journal said a few months ago, the currency question is a commercial question, rather than a banking question. It should be studied from a commercial standpoint."

In the earlier passages of the address delivered by Mr. McDougal to the bankers of New York, he referred to the phenomenal prosperity of the country and the wonderful business activity prevailing everywhere as being, if not a menace, a reason why bankers should force a policy of retrenchment by curtailing loans to customers and compelling that thrift which to-day appears to be forgotten.

The wise and timely message of this New York banker to his brethren is deserving of careful consideration by those who are interested in banking and commerce in our own fair country.

AS OTHERS SEE US.

The members of the Texas Bankers' Association who visited Montreal last month have evidently returned home with a good impression of the city and their entertainers.

The *Dallas News* of July 7th says:

"Canadians we found to be Americans. At Montreal we were welcomed. We were met, in fact, at Kingston, many miles away. We were treated as brothers and as guests that they were glad to have. There is a sort of unity in that country that is striking. We found no violent racial differences of French and English and others. Things seem smooth and everything well ordered. There were phrases of speech that seemed strange to us, and our talk was amusing to them sometimes, but we got along famously with the most modest nationality we have ever seen. We tried to get a gold-headed cane to present to the chairman of the entertainment committee. There was none to be had and we were told that had there been one the Canadian would not carry it. We got a silver-headed cane instead and it was declared that it would be in every way more acceptable."

The *Texas Banker* is equally eulogistic of the St. Lawrence river and the Canadian capital, remarking:—

"That sail through the fairyland and of the Thousand Islands was a scenic revelation; and the mighty St. Lawrence, with its exhilarating 'running the dangerous rapids,' brought the party into the arms of the hospitable, dignified, and affable bankers of Canada's metropolitan city of Montreal. Their welcome and entertainment was 'royally Canadian,' with eatables and drinkables, car rides, the drive to Mount Royal—a mountain converted into the city's park, from which one of the most kaleidoscopic panoramas in all Canada can be viewed,—and then a tour amongst the stately bank edifices, churches, and educational institutions. Canada with her industrious people, practical business men, and vast resources, especially of her agricultural northwest, undoubtedly has a wonderful future."

The financial editor of the *Texas Journal* evidently shared in the general enjoyment. He writes as follows:—

"Supper was enjoyed at the Queen's hotel and the weary eyelids of 200 Texans were soon closed in sleep, a refreshing sleep so much needed, in which visions of the trip came with dreams of our loved ones in far off Texas, 2,210 miles away.

Early on the crispy, cool morning of the next day we boarded the most elegant observation cars we have ever seen. Old Montreal, with her historic shades, elegant buildings, narrow streets, misty atmosphere, magnificent banks and colonial statuary was not unlike the picture of London. Cape jasmine buds were distributed and proved of rare interest, and again 'Colonels' were created for life.

In the afternoon we were guests of the Montreal Jockey Club. Upon entering the grandstand a Texas horse, Dr. Mack, was just closing, as winner, a race over eight competitors, and later on another Texas thoroughbred led in victory a string of six Northern prize winners."

THE WHEAT PLANT LOUSE.

WE have been hearing a great deal recently about the terrible plant-louse, wheat aphid or green bug, which has caused the wheat market to be so uncertain of late, and now that the market is regaining its normal tone it may be interesting to know just what this plant-louse is.

The wheat plant-louse or aphid, which is known to entomologists as *Nectarophora Avenue*, Fitch, is a very small, green, soft bodied insect which, attacking the wheat in prodigious numbers, destroys it by sucking up the plant juices through its relatively long proboscis.

During the autumn of 1905 this aphid spread in large numbers through some of the southern states, and, as no precautions, such as burning of the stubble, were taken, it survived the winter in destructive numbers. The aphid winters either in the egg state, or as a wingless female in protected places on the ground, attacking the wheat early in the spring and continuing its ravages until harvest.

As the wheat matures, the aphid ascends the more succulent growing portions until the wheat-head or immature grain is reached.

Attacking the plant as it does in great numbers, the proper nourishment of the grain is arrested, and either an inferior quality of grain or the death of the plant results.

As the wheat matures and becomes strong, a winged brood of female aphids is produced which fly to neighbouring grain fields, or subsist on grass until the young winter wheat appears.

The astonishing rapidity with which they multiply is not to be wondered at, since we know that the female aphids are viviparous. During one season a single female may be the progenitor of several generations, producing from four to ten living young a day. These latter may, in turn, reproduce in three or seven days according to the weather.

Fortunately, there are several hymenopterous insects which are parasitic upon these aphids and generally keep them well under control, there being no methods known as yet whereby such large areas as the great wheat fields can be practically and economically protected.

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